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SOUTHCENTRAL SUBSISTENCE REGIONAL ADVISORY COUNCIL
INFORMAL PUBLIC MEETING
February 14, 1995
Regal Alaska Hotel
Anchorage, Alaska

COUNCIL MEMBERS PRESENT:

Roy S. Ewan, Chairman
Ralph Lohse, Member
Robert Henricks, Member
Fred John, Jr., Member
Gary V. Oskolkoff, Member
Lee C. Basnar, Member
Helga Eakon, Coordinator

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P R O C E E D I N G S

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3 CHAIRMAN EWAN: Call the Southcentral Regional Council
4 meeting to order. We'll have roll call at this time.

5
6 MS. EAKON: Ralph Lohse?

7
8 MR. LOHSE: Here.

9
10 MS. EAKON: Robert Henricks?

11
12 MR. HENRICKS: Here.

13
14 MS. EAKON: Fred John, Junior?

15
16 MR. JOHN: Here.

17
18 MS. EAKON: Lee Basnar?

19
20 MR. BASNAR: Here.

21
22 MS. EAKON: Roy Ewan?

23
24 CHAIRMAN EWAN: Here.

25
26 MS. EAKON: Gary Oskolkoff is on his way, and Ben Romig
27 from Cooper Landing is on vacation and therefore couldn't be
28 here.

29
30 CHAIRMAN EWAN: All right. This is a meeting, I guess
31 it's kind of a special meeting to review the Kenai c&t
32 determination. I guess most of the visitors heard the other
33 day, that we went through this process as a regional council in
34 the past. I guess we're just going to review what we did and
35 the Fish & Wildlife Service people are going to give us
36 additional input at this meeting.

37
38 This is a regional council meeting. We want everyone
39 that wants to be able to say something to be able to say
40 something here, especially the other regional council chairmen.
41 We'd like to hear what you have to say. I think that this
42 council wants to reserve the right to, you know, control this
43 meeting. I think it's our meeting. If we feel that the other
44 council members are taking too much of our time, we might -- we
45 may have to start having the control here.

46
47 With that, I want to -- I guess you already heard
48 everybody's name, but I want the Council members to introduce
49 themselves and tell you where they're from. I'm Roy Ewan. I'm
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from the Copper River area.

2

3 MR. BASNAR: Lee Basnar. I'm from the Cantwell area.

4

5 MR. JOHN: Fred John, Jr., Mentasta area.

6

7 MR. HENRICKS: Robert Henricks, Eyak/Cordova area.

8

9 MR. LOHSE: I'm Ralph Lohse, Cordova area.

10

11 CHAIRMAN EWAN: And can we just go on around the table
and introduce ourselves again one more time?

13

14 MR. BRELSFORD: Yes, of course, Mr. Chairman. I'm
Taylor Brelsford. I work with the Fish and Wildlife Service in
the Southcentral area and in the Bristol Bay areas.

17

18 MR. POSPAHALA: My name is Dick Pospahala. I'm with
the U.S. Fish & Wildlife Service, and I represent that agency
on the Interagency Staff Committee.

21

22 MR. BOYD: Tom Boyd. I'm with the Bureau of Land
Management, and I represent the BLM on the Staff Committee.

24

25 MR. KATCHATAG: I'm Sheldon Katchatag, Chairman of the
Seward Peninsula Subsistence Regional Advisory Council.

27

28 MR. ANVIL: Antone Anvil, Regional Council from Bethel.

29

30 MR. ABRAHAM: Pete Abraham, Bristol Bay Regional
Council.

32

33 MS. DETWILER: I'm Sue Detwiler. I work with Fish &
Wildlife Service in Anchorage on policy analysis and
interagency coordination.

36

37 MR. BORBRIDGE: I'm John Borbridge, subsistence
specialist for the BIA and member of the Subsistence Staff
Committee.

40

41 MR. HOWSE: I'm Norm Howse with the Forest Service out
of Juneau. I also sit on the Staff Committee for the Federal
Subsistence Board.

44

45 MR. THOMAS: Bill Thomas, Southeast Regional Council.

46

47 MR. RABINOWITCH: Sandy Rabinowitch for the National
Park Service, and the Staff Committee, also.

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1 MR. SAMPSON: Walter Sampson, Chairman for the
~~N~~Northwest Arctic Regional Council.

3
 4 CHAIRMAN EWAN: Do you want to start over here and go
 5 around?

6
 7 MS. EAKON: Helga Eakon, Coordinator for the Council.

8
 9 MR. SHERROD: George Sherrod, U.S. Fish & Wildlife
~~S~~Service.

11
 12 MS. H. ARMSTRONG: Helen Armstrong, Fish & Wildlife
~~S~~Service, Subsistence.

14
 15 MR. CALLAWAY: Don Callaway, Subsistence Division,
~~N~~National Park Service.

17
 18 MR. MORRISON: John Morrison with the Department of
~~F~~Fish & Game, State/Federal Subsistence Coordination.

20
 21 MR. HAYNES: Terry Haynes, Department of Fish & Game,
~~S~~Subsistence Division.

23
 24 MR. MATTHEWS: Vince Matthews, Fish & Wildlife Service.

25
 26 MS. JORGENSEN: Carol Jorgensen, Forest Service,
~~S~~Southwestern Coordinator.

28
 29 MR. KUHN: Rod Kuhn, Forest Service.

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 31 MR. COFFING: I'm Mike Coffing, Fish & Wildlife
~~S~~Service, Bethel.

33
 34 MR. ULVI: Steve Ulvi, Gates of the Arctic National
~~P~~Park.

36
 37 MS. MELDRUM: Janis Meldrum, National Park Service,
~~S~~Subsistence.

39
 40 MR. ANDREW: John Andrew, Coordinator for Yukon Delta
~~41~~Yukon/Kuskokwim Delta Regional Advisory Council.

42
 43 MS. B. ARMSTRONG: Barbara Armstrong, Coordinator for
~~44~~the Arctic regions.

45
 46 MR. WILD: Terry Wild, acting administrative officer,
~~S~~Subsistence Management, U.S. Fish & Wildlife Service.

48
 49 MR. WILLIS: Robert Willis, wildlife biologist,
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Southcentral region, U. S. Fish & Wildlife Service.

2

3 MR. DOSHIER: Daniel Doshier, U.S. Fish & Wildlife
Service, Kenai Refuge.

5

6 MR. CHASE: Mark Chase, Fish & Wildlife Service, Kenai
Refuge.

8

9 MR. DIRK: Moses Dirks, Fish & Wildlife Service.

10

11 CHAIRMAN EWAN: Okay. Anybody else that we missed
here? If not, then we'll just go on into the meeting. I
believe Dick Pospahala wants to start this meeting off with a
review or whatever you want to do here?

15

16 MR. POSPAHALA: All right. Thank you, Mr. Chairman.
In response to a very thoughtful letter by Mr. Ewan last fall,
the current venture of the Federal Subsistence Board responded
in a letter dated December 19th, which I think has been
distributed to all the Council members, and you've certainly
had time to review the substance of that letter.

22

23 What it does basically is to raise to the forefront the
fact that within the Federal community for some time there has
been a divergence of views about how the customary and
additional use applications would be applied as a part of the
Federal subsistence management program. This is a topic that
the agencies have dealt with almost continually over the past
four years or so, and have been unable to come to a uniform
agreement as to how to deal with this topic.

31

32 In the meantime, we have been trying to move ahead in
discussions and deliberations with the Southcentral Regional
Council to achieve a resolution of the customary and
additional use determinations on the Kenai Peninsula.

36

37 After that letter was written or about the time these
issues were being raised by the Southcentral Regional Council
and -- the Subsistence Board met in executive session on
December 19th, the same day that this letter was signed, to
meet with the staff, review the issue and make their
recommendations as to where we should head in this program.
The outcome of that session was then for them to redirect the
Interagency Staff Committee to resolve a couple of the issues,
and to embark on a course of action that would allow this
process to move forward in concert with existing regulations.

47

48 They then met on June (sic) 12th, and I was not in
attendance at that meeting, but I have reviewed the detailed

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records that were kept at that session. Very importantly, I think what the staff committee decided was an appropriate course of action was to convene a session, which we held yesterday, to discuss this issue in a very detailed sense with each of the representatives of the Regional Advisory Councils, and to seek their input and guidance on how we move forward in dealing with this issue.

8

9 That meeting was held yesterday with two principal objectives: The first was to seek agreement between the Regional Council representatives and the Interagency Staff Committee regarding customary and traditional use determinations within the context of our existing regulations in a fashion that's flexible and respectful of regional diversity. We pointed out that our efforts here needed to consider the various concerns relative to conservation issues, equity in the allocation of public resources.

18

19 The second objective that we approached yesterday was to discuss, refine and commit to a process for Regional Council involvement in the over-all c&t process.

22

23 I think many of us recognize that although early on we did I think try to establish a process with regard to the Kenai that involved a great deal of interaction with the Southcentral Regional Council, it was apparent to us that there was something wrong with the system, and it wasn't working very well either to the benefit of the Council or to the agencies represented in the Federal program.

30

31 So we did meet yesterday and reviewed these issues in some detail, and at the conclusion of that session generally agreed to continue to embark on a process in concert with the existing regulations, recognizing that there may be in the longer run some level of dissatisfaction with the regulations as they exist at this point in time, and there may be a need to reassess that and seek adjustments in the longer run.

38

39 With that in mind then, what we've identified as a general process is to assure some level of public involvement by holding subregional hearings with the full Council and agency staff present, and the Staff Committee as well, to provide opportunities for public input. Publicize these meetings so that the Council then would have additional information to -- available to them from residents of that subregion to lay before them to define the customary and traditional uses that are practiced there. Reach a consensus on the -- at the meetings on the definitions of terms if there are any problems with that. Then with regard to the

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eventuality that an 804 process might be needed at some point in the game, to basically have the Councils prioritize the length of term of use of the resources by user groups. Then when there are overlapping areas of concern, to schedule joint Council meetings. Then the Regional Councils at that point would forward their recommendation on c&t uses at those Regional or subregional levels and present those to the Federal Subsistence Board.

9

10 The entire idea of this process is to develop one in which the Regional Councils, the public, and the Interagency Staff work very carefully together to create an administrative record if you will in concert with the eight factors that are identified in regulation, to move this process ahead, and with the idea in mind that at some point in time the Board action would almost be perfunctory, if you will, in the sense that we would be dealing with some very carefully analyzed and thought out recommendations from the Regional Councils, and recognized that what we're trying to do here is to make a basic change in the system, to build these -- to build this process from the bottom up, from the public through the Regional Councils and up to the Board, rather than to have a top down type application system.

24

25 Apparently there was some room at the end of yesterday's discussion with regard to the status of the eight criteria, and I did want to make sure that we all understand that the direction that the Staff Committee was given at the end of the December 19th meeting of the Board was that we would operate -- or we would make recommendations based on the regulations as they presently exist, and should changes in those regulations be sought, that will be a longer-term process. And I did say that yesterday, but I was notified after the meeting that there might have been some level of confusion in that regard.

36

37 We did have, at least in my view, a very productive session with a very open dialog with the Regional Councils yesterday, and I felt at least very positive at the end of the session, that we had achieved a great deal in carrying out the wishes of the Board as they were portrayed to us on the 19th of December.

43

44 CHAIRMAN EWAN: I just wanted to ask Council members, maybe we ought to set some ground rules here of how we want the other Regional Councils to participate. And maybe talk a little bit about agenda here before we get too far.

48

49 Thank you, Dick, for your opening comments here, and
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your information. But I think you told me that this is our meeting, so I guess we'd better agree to some kind of agenda here and process here first.

4

5 Do the Council members -- I know that you didn't have any input into the agenda. I didn't either. It was more or less put together by Fish & Wildlife Service staff, so I would like you to take a look at it and see what you think.

9

10 Yeah, go ahead?

11

12 MR. KATCHATAG: Mr. Chairman, Sheldon Katchatag, Seward Peninsula. I wanted to make a few additions to the synopsis of yesterday's meeting that Mr. Pospahala just presented.

15

16 Those of you that know me realize that one of the components which I always champion is the tribal cause in all of this. That was one of the things that I'd sure -- I overlooked yesterday that should be a part of the process, or the procedure which we agreed on yesterday. I've always held that subsistence as it's defined in ANILCA, customary and additional use, is the sole purview of the tribal governments with regard to the subsistence by their memberships. So I would recommend that the first item in the procedure up there be modified to add "with the affected tribal councils" in the subregional meetings, and also in the Regional Council recommendation be subject to the agreement by the tribal governments to the recommendation. Thank you, sir.

29

30 CHAIRMAN EWAN: Okay. Let me ask the question of Council again, Southcentral Council. You're all right with the agenda? Should we go ahead and proceed then? Hearing no objection then I'll guess we'll just go ahead and proceed.

34

35 Taylor, did you -- you're next on the agenda, right?

36

37 MR. BRELSFORD: Yes, Mr. Chairman.

38

39 CHAIRMAN EWAN: Okay. Mr. Brelsford?

40

41 MR. BRELSFORD: Yes, I think what might be helpful is to just touch on a couple of the milestones in coming to where we are now. And there's a handout around the table, this was used yesterday, so those of you that had the materials yesterday should be able to pull it out again, and I believe this was provided to you this morning, to the Southcentral Regional Council. It has a title on the top, "An overview of Federal customary and traditional use eligibility determination policy," and a small in the top corner of February 13th. I

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Believe some additional copies were being made. I learned unfortunately that yesterday when we were going through this many of the people in attendance didn't have copies in front of them, so I think some additional copies are being prepared right now, and we'll put those in front of you just as soon as we can.

7

But I'd like to be very brief. I think particularly for the Southcentral Council, we've been through many steps of this together, and there's no need to really dwell on it too much.

12

Basically the foundation of the Federal policy on making c&t determinations comes from the temporary rules, the temporary subsistence management regulations that were passed in 1990, and then a long public discussion from 1990 to '92 in the preparation of an EIS, an environmental impact statement. A number of village meetings were held, something on the order of 50 village meetings were held during that period to review the draft and the final EIS. And there was a lot of comment at that time from many individuals and organizations, native organizations and the ADF&G and otherwise, talking about the c&t aspect. And all of that was sort of tied together in the final regulations that were passed in May of 1992. It's -- the technical word is the final rule on subsistence management regulations.

27

On the third page of the handout, the key part of those final regulations talking about c&t determinations is photocopied for your benefit. If -- we've been through this together a number of times, so these eight factors are going to look pretty familiar, but that's kind of the regulating framework for making c&t determinations.

34

I think Dick and others have talked about this -- the next phase in all of this, trying to implement the c&t regulations. On the one hand there was discussion and dialog among the Federal agencies trying to figure out how to do this the best way, and that took some time, and really didn't come to final conclusion on some key points, but at the same time we were trying to get going on some of the most urgent cases, the most urgent regional situations. So on the Kenai Peninsula we've been working with the Southcentral Council for a little while, oh, a year and a half now, and in the Upper Tanana Basin there has also been a c&t review during this same period.

46

In our exercise with the Southcentral Council, we met in December of 1993 to go over a draft report, an effort to tie together all of the basic information on harvest practices on

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the Kenai Peninsula. We then met in January of '94 to look at some draft conclusions, and those conclusions were laid out in kind of a spectrum, a set of alternatives. We may want to go back to those and kind of look a little more specifically, but as far as milestones, those are some of the main steps in the exercise with the Southcentral Council.

7

8 In June -- pardon me, July of 1994 these procedure
discussions were kind of drawn to a close in the Staff
Committee, and a Federal Register notice that compromises (sic)
the last three pages -- comprises the last three pages of your
handout outlines some of the administrative steps to conduct
the c&t reviews.

14

15 And I think to kind of put in perspective what we did
yesterday, basically what we're saying is these steps don't
make sense any longer. Dick actually used the word, "we might
cancel" the Federal Register notice, this set of administrative
steps, and instead adopt an approach or a set of steps that are
these up here: Regional Council meetings as the starting point
and so on. So when you -- if we have reason to refer back to
this Federal Register notice in July, I think that's really
where the major change in procedures and steps is already --
you know, we've kind of come to a consensus on a dramatic
change in the administrative steps that are represented here.

26

27 On the second page, this will be the final phase more
or less of our evolution together, starting in November of '94
the Fish & Wildlife Service floated a fourth alternative for
the Kenai Peninsula. And I think one of our failings, that
Dick's been a little understated about, is that we had not had
much of a chance to discuss that alternative with the
Southcentral Council or with the Federal agencies, and it
struck off in some new directions and I think raised some
important questions. It really brought about a kind of basic
reconsideration of Federal c&t determination policy. As was
mentioned, the Board met to discuss this in an executive
session in December of 1994, and the Staff -- and gave some
direction to the Staff Committee to go back and try and develop
middle ground, a kind of new approach that would meet a wider
consensus.

42

43 The Staff Committee met to take up that responsibility
on January 12th, and as was noted, their -- one of the early
commitments in the Staff Committee's discussion last month was
for a consultation with the Regional Council chairs, and a kind
of open-ended discussion with the Southcentral Council to kind
of bring everybody up to what has happened, where are we --
where have we come from, and then where are we going to try and

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do.

2

3 So, Mr. Chairman, I believe that that kind of gives us
4 the foundation, some of this middle discussion, and trying to
5 start the exercise, start the implementation, and then finally
6 our need to really reconsider some of the basic questions.

7

8 If there were any questions, I'd be happy to try and
9 answer them, but I hope that will provide enough of an overview
10 for us to go ahead.

11

12 CHAIRMAN EWAN: I just want to say this, you know, I
13 think we're -- our Council, you know, I can't speak for every
14 they're all individuals, for everyone, but some of the
15 Council members here are a little bit confused about what we're
16 doing here, so what you're actually asking us to do is to do
17 our process over again?

18

19 MR. BRELSFORD: I guess my interpretation is that we
20 want to provide a full explanation of some new thinking, some
21 new ideas about how to approach this. Some of them are
22 reflected here, and

23

24 CHAIRMAN EWAN: The thing about what's up there is, you
25 know, it's something that came from somewhere else. I don't
26 see any reason why Southcentral should do what maybe Sheldon's
27 region wants to do. I don't see that, you know, somebody
28 else's will being imposed on another Council. I don't see that
29 criteria at all. I think if the people in the region that know
30 what they want, and that's what I would base my, you know, --
31 whatever this Council desires to do, I think that's what they
32 should do.

33

34 Lee?

35

36 MR. BASNAR: Yeah, Mr. Chairman, I agree completely.
37 And I'm also a little confused as to why we're here. We met
38 last January. We had a very extensive working session. We
39 outlined our position very clearly. We worked damn hard at it.
40 About nine months go by, and all of a sudden I felt like we
41 were torpedoed. And what do you want us to do today? Reprow
42 the old ground that we reprowed last January? I mean, I'm here
43 to work, but why do I have to do what I already did a year ago?
44 I haven't changed my position. I don't know if the rest of
45 the members have or not, so

46

47 CHAIRMAN EWAN: Ralph?

48

49 MR. LOHSE: Mr. Chairman, I'd like to ask Taylor a

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couple questions while we're -- well, since he just finished.
I hate to put him on the spot, but Dick's right here, too.

3

4 I've got the same questions basically that Lee has, and
that's where do we as the Southcentral Council go from here?
Is this going to be a limited scope meeting, or a broad
spectrum meeting? Is it an informational meeting? Do we take
action at this meeting?

9

10 And these basic questions you keep -- that you
mentioned, the basic, basic questions on c&t, can you define
them? I mean, can you define the different positions so that
we have something to look at as to, you know, what are the
different alternatives? I mean, we went through three
different alternatives when we discussed c&t to begin with on
the Kenai.

17

18 Now, evidently there is some basic philosophical or
presupposition questions that we have here that people haven't
come to an agreement on on a broad base. Can you define those
questions for us so that we've got -- so that we can see what
kind of alternatives are being discussed?

23

24 MR. POSPAHALA: Could I

25

26 CHAIRMAN EWAN: Yes, Mr. Pospahala.

27

28 MR. POSPAHALA: try to respond to him? I think
I'll answer your last question first, and I think the answer to
that is, yes. Then I'll try to go back to -- go back to the
other issues with regard to the specific issues on the Kenai
Peninsula.

33

34 The purpose of today's meeting with the Council is to
basically exchange information and clear the air on what's been
going on within the Federal community and the Staff Committee
with regard to this entire process, and with the Regional
Councils yesterday.

39

40 I'm not considering the idea that we -- or suggesting
that this Council go back and start their process over from
scratch. I think one of the things we wanted to do today is to
discuss options about how we might move forward in the future.

44

45 There is a bit of a problem with today's meeting in
regard to adequate public notice and that sort of thing with
regard to the Federal Advisory Committee Act, and I think we've
pretty well decided that it would be inappropriate to actually
use this as a decision-making session. You'll have an

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opportunity at your meeting later on this month where that would be more appropriate, because there would certainly be adequate public notice, and that sort of thing. So I would suggest that the decisions be deferred until that time.

5

6 So in that context I view today's session as one to exchange information and perhaps discuss strategies about how
8- with regard to how -- what we might move forward to start
with the Kenai process. But I'm not suggesting -- prepared to
suggest that we go back to ground zero and start over again. I
think you all have invested a tremendous amount of effort in
this.

13

14 CHAIRMAN EWAN: Yeah, I think the number one thing up
here that the people brought up here yesterday was to hold
subregional meetings. We did hold a meeting out over in Kenai,
and had a public meeting for two days. Open to the public. I
think the only people that spoke were two people I think. So
it was to me a waste of our time. They really didn't change
our minds at all. So we said to ourselves after that meeting,
"Why have those meetings out there if there, you know, is no
input?" It didn't change our minds any one way or the other.
So that really don't apply to us I don't think.

24

25 Maybe up in -- I think we're adequately represented up
in the Copper River area. Lee feels he's adequately
represented over in the Cantwell area. Cordova area is well
represented. The Kenai Peninsula is well represented here. I
think we're okay. That's how we feel.

30

31 Ralph?

32

33 MR. LOHSE: Mr. Chair, I -- from what Dick is saying
right here, this is kind of what my idea of this meeting was
going to be was basically a sharing of information and concerns
from other people so that when we have our meeting in February,
we've at least -- that we at least have an idea of what other
kind of ideas are going on in other places, what other kind of
what other kind of concerns other people have had with what
we did. That's where -- that's why I asked Dick the question,
if he could define the basic questions that have come up over
what we've already done. And that's kind of what I'd like to
hear from -- you know, if we can't take action here, which I
agree with Dick, we can't take action here. This is not a
meeting to take action at. What I would like to do is I would
like to see what concerns people have with what we've already
done, so that we have something to work on when we sit together
at the meeting later in February.

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1 I agree with you that, you know, we've put a lot of
 2 work in it to begin with, and we felt like we were addressing
 3 it under the criteria that we were given when we were
 4 addressing it. Now, has that criteria changed? Have the basic
 5 questions changed, or are people concerned from other areas
 6 with a direction that we've gone in? You know, that's kind of
 7 - that's kind of what I'd like to hear.

8

9 CHAIRMAN EWAN: Sheldon?

10

11 MR. KATCHATAG: Thank you, Mr. Chairman. First of all,
 12 I'd like to emphasize that the concerns brought forth by the
 13 other Councils with regard to your determinations on Kenai c&t,
 14 one of the main reasons we objected was that, excuse me, was
 15 that we were afraid that there were going to be precedents set
 16 which would have far-reaching implications with other regions.
 17 And that was one of the reasons why we were thankful for the
 18 discussion yesterday, and clarification of the fact that, first
 19 of all, even though we were trying to develop a c&t procedure
 20 applicable across the State, one of the things that we wanted
 21 was to maintain the integrity of the Councils and their ability
 22 to determine for their own region what's best for their region
 23 and the people that subsist in their region.

24

25 Another thing is that one of the things that we agreed
 26 yesterday that isn't on the board is that the eight factors
 27 that are talked about in the notice are not to be used as
 28 criteria, but more as examples of what might constitute
 29 customary and traditional use, rather than saying this -- these
 30 are the criteria against which all c&t uses will be measured
 31 against, or used to qualify with. So that's more or less where
 32 we were coming from.

33

34 Thank you, Mr. Chairman.

35

36 CHAIRMAN EWAN: I think that was Mr. Lohse, Ralph's
 37 question to the staff here. It's just to be the guidelines,
 38 the criteria are changing as we move along, if they are, we
 39 need to know.

40

41 MR. SAMPSON: Mr. Chairman, I think for clarification,
 42 just want to be clear here, that in regards to the decision
 43 of the Council, or the Board, what alternative has been -- not
 44 picked, but has -- what alternative is the Board going with?
 45 says here that there is three broad policies alternatives,
 46 A, B, C.

47

48 CHAIRMAN EWAN: Okay. Okay. I know what you're
 49 referring to then. The Board discussed this very thoroughly in
 50

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my opinion. We went with I believe A. We thought that C was too restrictive and so on. And some board members considered a combination of A and B I think. Go ahead.

4

5 MR. BRELSFORD: Mr. Chairman, for the benefit of the people, okay, there's -- one of the handouts is actually kind of a matrix that Helga and I worked up following the meeting with the Council, and in the columns moving from left to right, the first one is the Regional Council's recommendations. And then you see Alternative A, B, and C, and I believe what we did at that time was actually go through Alternative A, and the Council revised and modified as they saw fit. So some of the specifics are actually represented in this table.

14

15 CHAIRMAN EWAN: Does everybody have what you have?

16

17 MR. BRELSFORD: It was -- it should have been on the table as we went around. This -- it's -- okay. Let's see how that could have been.

20

21 CHAIRMAN EWAN: Do you have it? Where is it?

22

23 MR. BRELSFORD: Helga?

24

25 MS. EAKON: You have to go and hand it out.

26

27 MR. BRELSFORD: Let's make sure that

28

29 (Simultaneous speech)

30

31 CHAIRMAN EWAN: Does any Council member here, Southcentral Council member want to expand on our discussion maybe for the other Council chairmen's benefit? The alternatives that we considered? Do you have something else?

35

36 MR. BRELSFORD: Well, I think one of the agenda items was possibly to -- the next item on the agenda was possibly to touch on Alternatives A, B, C, the Council's recommendation,

40

41 CHAIRMAN EWAN: Okay. Let's go

42

43 MR. BRELSFORD: review comments and

44

45 CHAIRMAN EWAN: to that then. Let's go on through that, yeah.

47

48 MR. BRELSFORD: the November alternative that we put on the table. So maybe that would advance it.

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1
2 CHAIRMAN EWAN: Yeah. Okay.

3
4 MR. BRELSFORD: Okay. I believe in addition to the
5 table that kind of sums everything up, there's actually the
6 discussion that it's based on in -- I think the copies at
7 everybody's seat are actually a lighter green. And I believe
8 this is -- this policy alternatives and discussion had been
9 circulated to all of the Regional Council chairs last spring,
10 so perhaps some of you had a chance to review this earlier in
11 the year.

12
13 But again I'd like to be quite brief, and so if we skip
14 other things that are important, maybe you can come back and ask
15 some questions, but in the draft report titled "Customary and
16 Traditional Use Report, Policy Options and Proposed
17 Conclusions," on page five you'll see an effort to describe
18 Alternative A, kind of the logic behind Alternative A, and the
19 principal idea in that alternative was that all resource uses
20 in rural Alaska, on the Kenai Peninsula would qualify as
21 customary and traditional uses; that historic uses by average
22 rural communities at the turn of the century would establish
23 the eligibility for contemporary residents, for people living
24 here today and there wouldn't be a lot of concern given to
25 whether the contemporary communities had a long history of use
26 themselves. So under Alternative A, newly established
27 communities, Whittier would be an example of a community
28 established specifically at the time of the war. That
29 community would have eligibility because resources were being
30 used by aboriginal people over a longer period of time in that
31 area. So Alternative A sort of said every place that resources
32 were used, those communities, contemporary communities would
33 have eligibility. It's the most wide-ranging alternative.

34
35 If we turn to page

36
37 MR. LOHSE: Twenty-two.

38
39 MR. BRELSFORD: Twenty-two, thanks. A simple -- a kind
40 of over-view effort to characterize Alternative B is laid out.
41 And I think Alternative B is an effort to kind of address some
42 of the eight factors a little more specifically, and so it says
43 that harvest patterns must show a level of time depth, a
44 significant level of time depth, generally 20 to 30 years prior
45 to ANILCA, and that's more or less the period of one
46 generation; that these would be harvest practices, harvest
47 patterns that had been passed on through a generation in the
48 region. They would have to have a significant time depth and
49 continuity. They would reflect a significant level of reliance
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on local resources; that people in the communities are using many resources in their local area, not just a few; and that a majority, a high proportion of the community would be involved in the resource uses. These would be characteristic of the community as a whole. So those are some of the key ideas in option B, and the outcomes are summarized in the table.

7
8 MR. LOHSE: Thirty-six.

9
10 MR. BRELSFORD: In option C, and the summary is found on page 36, there's an effort to be a little more focused and precise, particularly having to do with the problem of where Federal lands are located. And on the Kenai Peninsula those of you that know the region recognize that many of the communities are at some distance from Federal lands. Federal lands are relatively limited on the Kenai Peninsula, so in option C there was an effort to identify communities whose resource practices occur in significant percent or significant measure on Federal public lands. They are historically well-rooted, reflect a significant patterns of reliance, and are a predominant characteristic of the community.

22
23 In -- at the time when we discussed options A, B, and
24 we were operating under the guidelines that you had to make a single judgment about the entire community, that there was no option for individual eligibility as was the case for some of the circumstances in national parks, that we had to figure out what constituted the characteristic pattern of a community as a whole. I think some concerns were expressed about that by members of the Southcentral Council when we talked, and that's really the on-going source of some new alternatives that have come up since.

33
34 Let me say that when the Council developed its review comments, its reactions to Alternatives A, B, and C, again they reacted -- they thought Alternative A was the best starting point, but made some adjustments and some revisions. There were some instances in which communities didn't travel as far as the eyes of the Council to harvest the resources. Some changes were made on that basis. There were some instances where the -- let me -- the historic time depth of the community wasn't as great as it should have been, and so some communities didn't have resource uses that the Council considered long term. Those are some of the reasons that the Council raised in asking the modifications that are reflected in the Council's review comments.

47
48 Let me finish just by saying that in November when we offered another alternative on the part of the Fish & Wildlife
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Service, the principal focus there was to say that in some instances the communities looked like their resource use patterns were relatively new, that they didn't have the kind of time depth and the kind of fabric of reliance that many people think of when we talk about a subsistence community. And sometimes in those communities, even though the majority characteristics have changed, there are still significant groups or portions of that community that do have long-standing historic uses of resources, particularly in the case of the tribes, the Federally-recognized tribes on the Kenai Peninsula. So one of the key ideas in the alternative that was offered on November 2nd was to acknowledge that sometimes the use patterns could be different or diverse within a community, and we would need to take into account the long-standing historic interest of groups, or smaller subcommunities within some communities on the Kenai Peninsula.

17

18 I'm sorry, the alternative from November is actually in your hand-out materials as well, and would be available for more specific reference or discussion.

21

22 So I believe that kind of characterizes what's been on the table in our work together so far, and maybe from there we can answer questions or points of clarification, Mr. Chairman.

25

26 CHAIRMAN EWAN: Okay. Mr. Basnar?

27

28 MR. BASNAR: Yeah, I have a question for the chairmen of the other Councils. Sheldon had a very good point, that he was concerned that we'd be establishing a precedent that might force the other Councils to follow, and I think that's an excellent observation. However, having -- I hope you've had a chance to review our work and what we did. Do you have a concern with what we did? Have we established a precedent in our recommendations that would be difficult for you people to follow if you were required to? Can any of you comment on that?

38

39 MR. KATCHATAG: Mr. Chairman?

40

41 CHAIRMAN EWAN: Yes.

42

43 MR. KATCHATAG: Mr. Basnar, looking at policy alternative A and the summary of it, I have grave concerns about that particular -- I don't know if it's a summary or the basic thrust of the entire policy alternative A. To my way of thinking as a tribal person, I have difficulty accepting the summary which says "historic uses establish an interest which extends to contemporary residents without regard to continuity

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between past and present uses." To my way of thinking, that is not -- that does not fit within the customary and traditional definition. That's one of the concerns that I had.

4

5 Yesterday in coming up with the c&t procedure, we stipulated that this procedure is applicable whereby this procedure is applied so that, number one, customary -- customs and traditions are brought to our attention by those which practice them in the subregions, and they tell us what their customs and traditions are. We do not have criteria which define customs and traditions, but they tell us what their customs and traditions are. And the eight criteria are not used -- excuse me, the eight factors are not used as criteria to measure these customs and traditions, but more to satisfy the administrative understanding of these customs and traditions. In other words, the customs and traditions that are brought forward in these hearings are those that are practiced by those people subsisting in those subregions, and that this is the proper development of customary and additional uses and determinations. In other words, they should be from the user up, rather than from the administration down. Thank you.

23

24 CHAIRMAN EWAN: Yeah, Norm?

25

26 MR. HOWSE: Just for a point of clarification I think. What you've been discussing so far are the alternatives A, B and C that were developed by the Fish & Wildlife Service as part of their process, and also their alternative last November. I don't think anybody here has seen the Regional Council's work that was done last January, a year ago January, so there may be a loss of continuity here. I don't know that everybody is aware of what that is. I know that there was some modifications to Alternative A. It's not strictly the Alternative A that was just presented, so

36

37 CHAIRMAN EWAN: Yeah, Lee?

38

39 MR. HOWSE: Sheldon and others may not be

40

41 MR. BASNAR: Yeah, I share

42

43 MR. HOWSE: fully understanding that.

44

45 MR. BASNAR: Excuse me. I share Sheldon's concern about the -- extending to the contemporary residents, but I'd like to give an example of how we addressed that particular issue in our -- at our Council, and that may help.

49

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1 The issue of the Ninilchik Tribal Council, and the
 2 people from Ninilchik taking goats up in the Whittier area.
 3 Now, that's quite a stretch if you think somebody walked or
 4 took a boat from Ninilchik all the way to Whittier. That
 5 hasn't been done in anybody's recent memory, but Gary
 6 Oskolkoff, who is a member of the tribal council, told us that,
 7 you know, there aren't -- paper wasn't invented back when they
 8 used to go up there and hunt goats, so there was no written
 9 record, but passed down over the generations to him. They used
 10 to hunt goats up in Ninilchik. They hunted other things at the
 11 same time obviously. So we took that into consideration.
 12 There was a gap. There was no continuity such as this example
 13 says, but we disregarded that. We said there was a gap for
 14 whatever reason, and we decided that, yes, they probably had
 15 customary and traditional use of goats in the Whittier area.
 16 That's how we addressed that particular problem.

17
 18 We weren't handcuffed by this definition here. We used
 19 it as a guideline to start from, but we went away from it. And
 20 if you go down the various alternatives, A, B, and C, and then
 21 the very first one, Regional Council -- well, let's take moose
 22 Unit 7 for example. We dropped off Seldovia. Alternative A
 23 said Seldovia had customary and traditional use of moose, and
 24 we said, no, they didn't. So that's how we approached this
 25 particular problem. We did it species by species, area by
 26 area. And so I don't think that we established any dangerous
 27 precedent by being lockstepped into something that came out of
 28 Fish & Wildlife Service.

29
 30 MR. HOWSE: That's my point. You don't have that on
 31 the table here right now. You don't have that in front of you
 32 to see it.

33
 34 MR. BASNAR: Well, actually it is, Norm, if you look at
 35 this particular sheet and go down the -- it's in the -- it's on
 36 the back of the minutes I guess of our meeting. And

37
 38 MR. HOWSE: I'm not sure everybody ever got those
 39 minutes.

40
 41 MS. EAKON: Here, do you want to

42
 43 MR. BASNAR: Okay. And you have to dig it out. It's
 44 not -- you know, it doesn't jump out at you, but

45
 46 MR. HOWSE: But I'm talking about the other Regional
 47 Council chairs.

48
 49 CHAIRMAN EWAN: Let me recognize -- well, Mr. Sampson
 50

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Here and then we'll go to Mr. Lohse.

2

3 MR. SAMPSON: So what I'm hearing here is that the
4 Alternatives that we're looking at in the green booklet is the
5 Agency's interpretation of the c&t policy alternatives. So in
6 regards to the Southcentral's, there's a complete different set
7 then.

8

9 CHAIRMAN EWAN: Yes?

10

11 MR. LOHSE: Mr. Chairman, I'd like to address what
12 Walter just asked right there. We didn't actually -- we took a
13 look at those, and we used those as guidelines. We didn't
14 follow any one individual alternative. And when you see that
15 piece of paper at the end that lists, you know, Alternative A,
16 B, and C, and we've got different communities in there, we
17 never did sit down and say, "this community gets it because it
18 fits Alternative A." That was just a simplistic way that they
19 had to put that out, and what we accomplished. What we did is
20 we looked at the communities by community, by what they've done
21 over time, by whether they were currently using them, and
22 whether there was Federal land. Again, we remember that this
23 is only applicable on Federal land. This is not saying this
24 community does or does not use moose, sheep, goats or bear.
25 It's just saying that did they customarily use the Federal land
26 that was available in that area? Did they go to that Federal
27 land and take part on that Federal land itself?

28

29 One of the things that -- one of the things that I
30 think we need to bring out is what Sheldon was saying about
31 precedent. I think of how Alaska sits, and we're probably the
32 only regional council that deals with an area that is totally
33 intertwined by mobility, by access. We have to deal probably in
34 a little different way than some -- like on the Seward
35 Peninsula or something where you have isolated rural tribal
36 communities that are isolated rural tribal communities, where
37 in Southcentral all people have mobility. The rural people,
38 the urban people, tribal people, everybody's got mobility, and
39 consequently we have the -- we have the ability to customary
40 and traditional, if you make a fairly short break, customary
41 and tradition can go a long ways. This is what we found like
42 when we found people from Ninilchik hunting moose up in the
43 Copper basin. The only reason that they're doing it is because
44 there's a road system. So we've got to take that into account,
45 so, and say that, you know, some of -- sometimes people might
46 have used that area, but they're only using it because we've
47 made the access available, and that causes problems in both
48 directions. So I don't -- you know, I don't see our
49 applications being directly applicable to somebody else's.

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1
2 CHAIRMAN EWAN: Sheldon?

3
4 MR. KATCHATAG: Thank you, Mr. Chairman. I appreciate
your clarification, and I understand that, and -- but one of
the -- if you look at the findings of Congress in Title VIII of
ANILCA, one of the reasons why ANILCA itself was adopted is the
fact that there was concern in Congress for ever-increasing
populations and their impact on subsistence and the resources.
And that's the main reason why -- if you look on page five,
second paragraph, I think that phrase on the second line of
that paragraph which says, "Which then extends to all
subsequent residents" would be in violation of Title VIII of
ANILCA, because the basic thrust of ANILCA is to preserve a way
of life based on customary and traditional use of resources.
And if you extend customary and traditional uses to be
applicable to all subsequent residents, then you're more or
less negating the requirement to protect the resources that's
listed in the findings of Congress with regard to Title VIII.

20
21 CHAIRMAN EWAN: Go ahead, Mr. Thomas.

22
23 MR. THOMAS: Thank you, Mr. Chairman. I agree with
what you're saying. And we mentioned it all day yesterday, and
we've mentioned it at different meetings, but we've never come
up with an idea on what to do about it and still satisfy the
requirements of ANILCA. I think that's where we need to head.
I think we're all in agreement with that, but in order to
satisfy ANILCA, it does make reference to those residents. So
I would like us to focus an effort on language or a process or
approach that would satisfy those residents. Thank you,
Mr. Chairman.

33
34 CHAIRMAN EWAN: Okay. Yes.

35
36 MR. OLSEN: Yes, Mark Olsen here, Kodiak Region. I
think it bothers me quite some and is very confusing as we look
under these alternatives. I think the biggest question that
comes to mind is why didn't we not have an individual
eligibility in c&t. I certainly feel that it's a process that
is available. When I say that, the State has already set a
precedence to us in by giving us limited entry permits to
certain people and now we are into individual quotas in our
area. To me that completely goes against the grain of
Judge Holland's ruling of equal resource to all people. I
sincerely feel to adequately cover ourselves that we need to be
able to look at it as an individual taking, and to be eligible
individual people. That's what customary and traditional
is, by the people that have used it. I think very strongly

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that the Councils should take this into real consideration to avoid a lot of this conflict. As I say, it has already been preceded by our State of Alaska, which is now issuing permits to special people for special resources and allocated resources. I think this is just a resource of the same, and it should apply to those that are eligible for it under c&t.

Thank you, Mr. Chairman.

8

9 CHAIRMAN EWAN: Okay. Can we get back to the agenda then? Do you want to take a break?

11

12 MR. LOHSE: Mr. Chairman?

13

14 CHAIRMAN EWAN: Yes.

15

16 MR. LOHSE: I'd like to address one concern that Sheldon brought up just before, because we were looking at Alternative A right here, and he was expressing a concern about the second line it. If you go down in that same paragraph, this is one of the things that we had to deal with when we dealt with c&t on the Kenai, and that's the idea that populations move. Even whole communities move, whole tribes move, for lack of a better way of putting it, to the point that they might not historically have used this area, but they have now moved. I think of where I taught school when I first came to Alaska. I taught at Ivanoff Bay, and the people from Ivanoff Bay basically moved out of the Katmai region back in -- when the eruption was. And they moved off to Perryville and then they moved out to Ivanoff Bay. That then is where they are making use of their subsistence resources.

31

32 And this kind of movement takes place even today. I mean, even today due to flooding or change in game populations, whole communities will move. And that's one of the reasons we didn't want to tie it down directly to, you know, that they had to be using that area on a long-term basis, because it affects everybody.

38

39 CHAIRMAN EWAN: Does the Council want to take a ten-minute break? Okay. We'll have a ten-minute break.

41

42 (Off record)

43

44 (On record)

45

46 CHAIRMAN EWAN: Call the meeting back to order. From the Southcentral Council members, I just want to hear whether we have any objection to going to the issues outlined in -- under that 11:00 o'clock on our agenda? We're there now. If

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there's no objection, we'll go on into that particular section
 there, and Taylor Breelsford will be

3

4 MR. BRELSFORD: Okay. Thank you very much,
 Mr. Chairman.

6

7 CHAIRMAN EWAN: reviewing the Federal subsistence
 customary use determination policies that affect Kenai
 customary and traditional use determination, and he'll give you
 examples and talk about threshold communities and all that.
 Okay.

12

13 MR. BRELSFORD: Okay. I'm waiting for Tom Boyd to sit
 down, because I want to be sure that he has a chance to offer
 some of the ideas that he presented yesterday and to make
 sure I kind of touch on some of the key ones.

17

18 CHAIRMAN EWAN: Could I before you start just say this:
 I think we're beginning to understand why we're here now.
 People wanted to be heard and they wanted to know the reason
 behind our actions as a Regional Council, Southcentral Council,
 and I think you're getting that, and we're getting your issues
 heard, and I think that in the end we'll all benefit from it.
 We're beginning to see that it might turn out to be a very
 positive meeting. I hope that it will happen that way.

26

27 Taylor?

28

29 MR. BRELSFORD: Okay. Thanks again. I think there
 were some very helpful little explanations around the table
 here, and maybe it's worth really underscoring that the purpose
 of this discussion was not to force the Southcentral Council to
 consider their views, but to make sure that everybody was
 current with some of the ideas that have been exchanged between
 the Council chairs and the Federal chairs. I think possibly
 some of the ideas would provide for a better bid. There may be
 some new tools that the Southcentral Council may think assist
 in simplifying some of the efforts that you guys have made.

39

40 In trying to distill, kind of draw out or highlight a
 couple of the key issues, there was quite a lot of discussion
 yesterday, and I think maybe we didn't start very well by
 bringing everybody up to speed on that, but one of the issues
 that had been raised at length among other Council chairs and
 the Federal -- among the Federal agencies was the idea that
 the c&t determination process has been kind of agency-guided,
 agency-directed, or top down. And one of the key suggestions
 that's being offered to remedy that problem, that perception,
 some of the ill-will that might be resulting, is to suggest

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that it start kind of from the bottom up from the other regions, and that we put the Councils in a more central position in describing what are traditional harvest areas, and maybe seasons or even harvest bag limits, that the Councils have that kind of expertise and we ought to really draw attention to that. So we started to use the words "bottom up" rather than "top down". And that's a little bit the spirit that's behind the procedures that Sheldon was working out -- was suggesting, and we've worked around here. So that's not to diminish the Council role, but very much to strengthen and enhance the ability of the Councils to explain to us, to inform the Board and the agencies what those traditions are and how best to provide for those in the Federal regulations. So that's maybe one point.

15

16 A related point is the idea that we might be able to tie together two programs that have been kind of separate in the past. I never thought that the abbreviations in Federal Government would be familiar to me, but the Feds call it Subpart C and Subpart D. Subpart D is our annual program each year to review harvest regulations, to make changes in seasons or bag limits or methods and means. And I think we've got a pretty good track record of constructive dialog together. The Council and the communities put proposals on the table. They say, "Hey, wait, that season doesn't quite do what we need. We want this additional period." The staff, the Regional Councils, Helga, Robert and I have tied together some background information and brought it back to the Council in the winter meetings for a second round of discussion. You guys have offered your recommendation to the Board, and I think so far the Board has been able to recognize a lot of wisdom in the Council recommendations, and we've really had very few instances where we've put some things on hold for an extra year's look at it, or something.

35

36 What we've been talking about is to try and build on the quality of staff/Council/Board interaction that has been working in the harvest regulations process, the September/February meetings of the Councils, and then carrying things forward to the Board.

41

42 Now, Subpart C has been handled a little separately. We -- in other parts of the State, people have said, "We need a change in the eligibility for musk ox," or the eligibility for rainbow trout, or the eligibility -- and they've been told, "No, you've got to hold off. There's a Statewide program that's going to go around the State one area at a time and look at all things together, and it's going to be a few years. It's going to be a little while before we get to your area." That's

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caused some problems. There have been some delays in other parts of the State that have made things -- that have been very troublesome.

4

5 So again, the idea of trying to bring these two together is part of what we're talking about, so that -- in Southcentral we'll go forward. We'll try and reach conclusion on the c&t's, but for the other areas that have been kind of on hold, I think what we're saying is we need to provide the flexibility for these Councils to raise questions about c&t determinations this year, next year, each year, not that they should have to wait on a process that's going to take a few years to get to them. So we want a bottom up approach, not top down. We want an approach that basically builds on the strengths of these annual meetings with the Councils and allows the Councils to bring up eligibility questions every year to help us -- I mean, to prioritize those, to figure out which ones are the most urgent and so on, but there would be no restriction, no limitation on the Councils, saying, "You've got to wait until we get around the table to you."

21

22 I think maybe the final issue to highlight from some of the discussion yesterday is the idea that when we talk about customary and traditional uses, we shouldn't just say which communities use what species where. We should go on to say what were the traditional times and periods and harvest levels?

27

28 CHAIRMAN EWAN: Taylor, could I stop you a minute?

29

30 MR. BRELSFORD: Of course.

31

32 CHAIRMAN EWAN: Something crossed my mind. I know we might have discussed it in one of our meetings, Regional Council meetings. That is, can our determination on c&t be changed down the road?

36

37 MR. BRELSFORD: Yes.

38

39 CHAIRMAN EWAN: So, yeah.

40

41 MR. BRELSFORD: I mean, the simple answer is the Council has

43

44 CHAIRMAN EWAN: So whatever we decide, we could change that down the road. The same with the other Councils. I mean, that should be fairly clear. Yeah. Thanks.

47

48 MR. BRELSFORD: I'll finish with just this final point, that I think some of the discussion in the Federal agencies and

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yesterday focused on the fact that we need to understand based on the Council and the community's knowledge what were the traditional practices, what species did people use, what were those use areas for their communities, but also what were the times and places and harvest limits or ideas about appropriate methods of resource harvest, so again we're going to try and bring some things together so that the Councils could make proposals for changes in which communities use musk ox or use moose, and they can say, well, not only did they use them, but they used them in September to April. They used them in September to October. They could indicate seasons and bag limits, regulations like that, at the same time.

13

14 So maybe I should stop there. I think those are -- that's how I would characterize the key issues that we've been working with, and in Tom's presentation yesterday, and just leave it there and let other people add and clarify.

18

19 CHAIRMAN EWAN: Mr. Boyd, did you have a comment on our first item here, threshold community?

21

22 MR. BOYD: I think yesterday I mentioned one of our concerns is that we had -- we, the Staff Committee had discussed was -- that was burning us as we were going through this process of c&t evaluations was how we handle, and I think the term "threshold communities" was used. I use the term "transitional communities." I mean the same thing. But the idea that communities, particularly those communities on the road map or those that could be termed regional or transportation centers are generally mixed culturally. They're not -- they're made up of native and non-natives. I think that's the plainest way I can say it. And that their customs and traditions are different. And we've been sort of -- we've recognized that, and we've been sort of struggling for a way of how do we accommodate that, and we wanted -- I think we -- this has been raised as a concern and issue, and we wanted to kind of air that and get some thoughts on the table regarding how to deal with those issues. That's as simply as I can put it.

39

40 CHAIRMAN EWAN: You're talking about suburban, of a community -- or the surrounding area near a community or can you tell us a little more about what you're

43

44 MR. BOYD: I'm not sure that I can. I think we recognize that there are communities where

46

47 CHAIRMAN EWAN: Or they're not quite communities
48

49

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1 MR. BOYD: Well, we may be talking about a geographic
 2 area with geographic limits, but within that geographic limits,
 3 there are peoples, or groups of people that participate in
 4 subsistence in different ways. And maybe an example of that
 5 that's come up time and again in our discussions was Ninilchik.
 6 There's a tribal element in Ninilchik that may have different
 7 subsistence use patterns than say the non-native component of
 8 that community. Whenever I get into these kinds of
 9 discussions, I get over my head real quick, because I don't
 10 know the nature of these communities, but there is a sense that
 11 there are differences, and the question comes up, is there a
 12 way to accommodate those differences in our regulations. And I
 13 think we want to put that on the table, is there a comfort
 14 level within this group to do that, or do we run into problems
 15 there?

16

17 CHAIRMAN EWAN: Ralph, could I mention one thing before
 18 turn it over to you?

19

20 Our Council discussed communities, and one of the
 21 things that we came up against is these communities don't have
 22 boundaries. A lot of communities don't have boundaries, and I
 23 think that's something that down the road that we, all the
 24 councils are going to have to face, like when you talk about
 25 say Unalakleet, where is Unalakleet? What's the boundaries of
 26 Unalakleet? Where does the next community start and so on?

27

28 In between places like that is where you're talking
 29 about?

30

31 MR. BOYD: Uh-huh (affirmative).

32

33 CHAIRMAN EWAN: We have in my region, in the Copper
 34 River area, my particular -- in Southcentral area, in the
 35 Copper River region have eight villages. They're very mobile.
 36 They're all along the road. In four hours they're here in
 37 Anchorage, or four hours to Fairbanks or two hours to Valdez.
 38 they're running around all the time.

39

40 Some people live, say, in a different community and
 41 work over here, and say they're from Glennallen. They pick up
 42 their mail in Glennallen, but they're ten miles down the road
 43 here. So, I mean, it's very confusing in our area anywhen when
 44 you're talking about communities.

45

46 Yeah, Sheldon?

47

48 MR. KATCHATAG: Mr. Chairman, Sheldon Katchatag, Seward
 49 Peninsula.

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 2 That was one of the things that early on when I first
 3 got on our tribal council in Unalakleet that I determined was
 4 necessary, and as a result we had a conference in Unalakleet in
 5 1982 regarding jurisdiction of the various tribes. And we had
 6 all the neighboring villages from I think it was White Mountain
 7 all the way to Stebbins meet in Unalakleet, and as councils,
 8 representatives of the tribal councils, they agreed on the
 9 jurisdiction of each village. So that in our area has been
 10 resolved regarding the jurisdiction of each tribal government
 11 as far as where their members traditionally subsist. And even
 12 though there's overlap, like in -- out in the bay, there's no
 13 exclusive boundary that says "people from Shaktoolik can't hunt
 14 fish on this side of a boundary." There is no boundary. We
 15 consider the Norton Bay, Norton Sound waters as being more or
 16 less the jurisdiction of everybody that bounds on the Sound or
 17 the Bay. So we have agreements that are on record for those
 18 type of problems in our area. And I'm sure that

19
 20 CHAIRMAN EWAN: I just want to comment that you're
 21 fortunate compared to other communities that don't have
 22 agreements like that. Yeah.

23
 24 MR. KATCHATAG: And I think it behooves tribal
 25 governments to have these kinds of conferences in their areas,
 26 that they know the jurisdictions of their tribal government.
 27 Thank you, Mr. Chairman.

28
 29 CHAIRMAN EWAN: Mr. Olsen?

30
 31 MR. OLSEN: Along the same lines, I want to verbalize
 32 here what we experience in Kodiak here as far as historical and
 33 boundary lines. How far do we want to go back? How far should
 34 we go back? As you had mentioned when Ninilchik people hunted
 35 sheep up in the Whittier area, you said there's no papers in
 36 those days.

37
 38 Well, fortunately here for Kodiak here, we have a real
 39 informational center, depending on who wants to interpret it,
 40 known as the petroglyphs. It was a real informational center
 41 that hunters passed on, they carved into the hard shale and
 42 rock that have been there for thousands of years. This is a
 43 definite showing of the different uses. I mean, they actually
 44 carved these into the hard shale and rocks that are very highly
 45 visible today. It's a museum within itself. We can go to the
 46 Karluk area to show that people came there annually for tens of
 47 thousands of years, yet our people have been known to sail
 48 throughout the whole Gulf.

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1 Where do we draw our boundaries? What do we use as a
 2 time frame to claim as historically? These would bring more
 3 questions to me. This is here again I believe a Council issue
 4 that where do we set the time frame? When does the clock begin
 5 ticking? Where do we address our boundaries to? It clearly
 6 shows our archaeology that our people utilized these resources
 7 for many thousands of years. Thank you.

8

9 CHAIRMAN EWAN: I really don't have an answer for
 10 Mr. Boyd. I believe Mr. Basnar talked about it at our meeting
 11 the time about boundaries in the Cantwell area, in the Denali
 12 National Park, or the subsistence commission they have over
 13 there. I think you mentioned that you were outside of the
 14 community, yet you're still a subsistence user of the park?
 15 Yet you were -- you're not in the community zone or whatever,
 16 the resident zone that the Park use as, you know, the users?

17

18 MR. BASNAR: That's correct, Mr. Chairman. One of the
 19 dangers that we get into when we try to define a boundary too
 20 specifically occurred up in the Denali Park area. Along the
 21 highway corridor there were some people that were found to have
 22 not had customary and traditional use of moose and caribou in a
 23 particular area when they'd been subsisting for years on moose
 24 and caribou in that particular area, but through an
 25 administrative decision, some people along the highway corridor
 26 there, McKinley Village up as far as Healy, were found to not
 27 have traditional use. So the Cantwell people can continue to
 28 hunt in the park addition to Denali National Park. I can,
 29 because I have an individual permit, and I don't live in
 30 Cantwell proper, and there were two or three other people that
 31 fall into that category. But we dropped out about 16 people
 32 who had customarily and traditionally hunted in that particular
 33 area, because somebody arbitrarily did draw a line. So we have
 34 to be very careful that we don't drop some people through the
 35 cracks when we make these decisions. And they're not easy ones
 36 to make.

37

38 CHAIRMAN EWAN: Yes?

39

40 MR. O'HARA: My name is Dan O'Hara. I came in a little
 41 late this morning. I thought you started at 10:00 o'clock, so
 42 took a little break, but I'm ready to go now, so it's nice to
 43 be here this morning.

44

45 Peter and I are from Bristol Bay, and on this boundary
 46 issue, one of the things, and correct me if I'm wrong, Peter,
 47 we have drainages that we usually use as our boundaries, and
 48 that works out pretty well. And the drainages are divided up
 49 by the Alaska Department of Fish & Game, and we recognize

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these, and we've kind of picked up and used on these pretty much for our boundaries. For instance, we always have a spring hunt, Alaska Department of Game -- Fish and Game has a spring hunt for the Naknek Drainage only. Every year. Now, bear alternate for the State side. But -- so we've kind of accepted that as some of the things in Bristol Bay, because everything kind of drains down into the Bristol Bay area from the Alaska Peninsula on the Togiak side, so that hasn't been too bad. Everything drains into Lake Iliamna, or into the Mulchatna. So I never really thought of boundaries being a problem. I guess it never -- maybe it will become a problem. That's just an interesting question, Mr. Chairman.

13

14 CHAIRMAN EWAN: Sheldon?

15

16 MR. KATCHATAG: Mr. Chairman? Yes. Thank you. I just wanted to verify that the boundaries that I spoke about in the Seward Peninsula/Norton Sound area are in fact as Dan O'Hara pointed out, they are drainages. We don't customarily and additionally use maps with straight lines on it as being delineations as being neighboring jurisdictions. We do use edge lines as the boundary lines, because they determine how you can get into a drainage. It's easier to go in the mouth.

24

25 And I pointed this out during last summer's hearings, the mouth of a river in the Inupiat language is not called a mouth. It is called a door. So that points out to the fact that the mouth of the river, that -- the English term, the mouth of the river to the customary and traditional people in our area is the door to that drainage. It's a lot easier to go in the mouth of a river or a creek and go up it rather than to climb up over the ridge line and come in that way, so I just wanted to clarify that. Thank you, Mr. Chairman.

34

35 CHAIRMAN EWAN: Any more comments on how we can define areas not, you know, really clear community, those areas surrounding a community, how we can -- yes, Ralph?

38

39 MR. LOHSE: Mr. Chairman, I just was thinking of some things while -- we covered a whole bunch of subjects real quick right here, and one of the subjects that Tom brought up was the idea of threshold communities, the fact that all communities aren't consistent. In a community on a road system you're going to have a long-term native population or tribal population. You're going to have long-term non-native residents. And you're going to have short-term residents who are in there for a specific job, a specific purpose. Maybe they're government employees or something like that that are very mobile residents.

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1
2 And what happens is the more isolated the community you
get, the more blending there seems to be. Just remembering,
you know, from my own experience, that when you've got a real
5- when you live in an isolated situation, everybody ends up
using the same thing and doing the same thing, and basically
coming up with the same kind of a feel for the country that's
around it, where when you take a threshold community, a mobile
community, you've got people who are there for a short term.
Maybe they're there and they look at it as an opportunity to
take a couple animals that they wouldn't have a chance to take
any place else, and then they're going to go on and they're
going to do something else. They don't have the same
continuity.

15
16 Sheldon brought up the idea of setting up tribal
government areas or areas over which they'd have jurisdiction,
and that brought up a problem that we discussed when we talked
about the designated hunter thing. What -- and I was
interested. You talk about the fact that you don't exclude
somebody from somebody else's area. I mean, where you overlap,
both people will make use of it. Then how would you work that
into if it became tribal management game management on it?
Would you have to work up some kind of consensus between the
two groups, or have you -- have you gone that far?

26
27 MR. KATCHATAG: Well, ideally -- excuse me, if I may,
28. Chairman? Ideally it becomes the province of the tribal
governments. They have to get together, government to
government and make a determination that they both can agree on
for their membership. That's the basis of government, is it
not, to provide for their membership by entering into
agreements with other governments, and that's basically how
we'd do that. The jurisdictions that I had mentioned earlier
were done through the tribal governments, so the government,
tribal government is central to determining how the two
memberships interact with each other. It has to be through the
governments so that, number one, the government can tell its
membership that it has an agreement with a neighboring tribal
government and that they make sure that they comply with the
agreement that has been reached between those governments.

42
43 CHAIRMAN EWAN: I think the problem that we're talking
about right now, threshold community, whatever you want to call
these communities, is more I guess down in the Southcentral
area, because we're -- my area, we're all -- all our villages
are connected by, all our communities are connected by road.
And if you have Chistochina here, and you have Gulkona here, in
between there's hundreds of people up and down the road. When
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they get left out, say, like the resident zone under the National Park's user definition of who could be a user, some people get left out in between. And this could happen here in this c&t determination where your communities determine c&t and then there's some people in between that we've got to worry about.

7

8 I think I'm going to recognize Mr. Thomas first,
 9 because he had his hand up quite a while ago.

10

11 MR. THOMAS: Thank you, Mr. Chairman. Earlier on,
 12 correct me if I'm wrong, that this particular region is the
 13 only region in Alaska that, what do you call, mobile? Is that
 14 the right term? Is that the case? That it is a mobile region?
 15 Now, let me go on.

16

17 The reason I ask that is to see how things, how is this
 18 activity being done in that region now? And what I was
 19 wondering is if whatever's going on there now with regards to
 20 the boundary questions you were asking, can your existing
 21 practice be applied for this c&t consideration? Does there
 22 need to be a change? Do those boundaries really have to be
 23 defined? Can you define the region as -- the boundary just
 24 dividing -- separating the region from other regions?

25

26 CHAIRMAN EWAN: You know, I don't think I can answer
 27 that. I think the problem is people get left out. They're not
 28 as if they weren't there.

29

30 MR. THOMAS: Oh, no, I'm

31

32 CHAIRMAN EWAN: Yeah. Yeah.

33

34 MR. THOMAS: talking about including everybody in
 35 the region.

36

37 MR. BASNAR: Well, I think you could take the town of
 38 Wasilla for an example and go north up the Parks Highway. At
 39 what point as you go north up the Parks Highway would you say
 40 that, "Okay, now you can subsist, but if you live south of this
 41 line, you cannot subsist." And then you extend that line west
 42 and you end up out in Skwentna somewhere. Well, Skwentna
 43 probably can subsist. But if some of these little individual
 44 cabins might fall one side or the other of the line or of a
 45 drainage. And these are the people that I'm concerned about,
 46 and I think Roy is. These are people who are -- can get
 47 tripped out of the subsistence. They've been there for years,
 48 generations. Natives in some cases.

49

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1 MR. THOMAS: But it seems to me like everybody is part
2 of a region. There's ten regions here now. Okay. You've got
3 a boundary between one and another region. Seems like if a
4 person gets dropped out of one, they should be absorbed or be
5 able to participate in the one that they're in.

6
7 MR. BASNAR: Well, in my example, the people in Wasilla
8 are not subsistence users, you see. Even though they're in
9 Southcentral Region, the people are not subsistence users.

10
11 MR. THOMAS: Right.

12
13 MR. BASNAR: So at some point as you go away from
14 Anchorage, you become a subsistence user.

15
16 MR. THOMAS: Okay.

17
18 MR. BASNAR: Where is that point?

19
20 CHAIRMAN EWAN: Okay. I think somebody has their hand
21 up over here. Was it you Ralph?

22
23 MR. LOHSE: No.

24
25 CHAIRMAN EWAN: No. Okay. Well, I'll recognize

26
27 MR. RABINOWITCH: Just to comment to your question, it
28 seems to me if you look at that chart that we were looking at
29 earlier, that the answer to your question is, yes, you do have
30 come up with a boundary, because some communities are
31 included in some subunits and some aren't. And as you say, it
32 forces you to decide, you know, where to draw a line, so I
33 think that the course that you've taken so far that you have to
34 you have to figure out how to draw a boundary. And clearly
35 that's hard to do.

36
37 CHAIRMAN EWAN: Yep, that's what we're just talking
38 about right now. Somebody else have their hand up back --
39 Terry?

40
41 MR. BASNAR: Terry, yes.

42
43 MR. HAYNES: Thank you, Mr. Chairman. In talking about
44 the transitional or threshold communities, ANILCA legislative
45 history specifies, it names five communities that are to be
46 created as rural communities for purposes of Title VIII that
47 are, I think, probably -- would fall into that category of
48 transitional or threshold communities: Barrow, Kotzebue, Nome,
49 Bethel and Dillingham. And the Department of Fish and Game
50

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1 tried to take a close look at these communities a few years ago
 2 to see what are their characteristics, and how might that help
 3 us stateside in evaluating customary and traditional uses, and
 4 what are the thresholds within these larger communities. I
 5 don't know, have you taken a look at those regional centers or
 6 the report that our Division of Subsistence did on those five
 7 communities to see if that would assist you in your analysis?

8

9 MR. BOYD: Well, I haven't, but maybe somebody else
 10 could respond.

11

12 MR. HAYNES: I don't know if that would be beneficial,
 13 but it is something that we took a look at, too, because the
 14 State has had concerns in the past about those larger
 15 communities and how do you deal with them versus the small more
 16 homogenous communities.

17

18 CHAIRMAN EWAN: Any other comments? Yes.

19

20 MR. CALLAWAY: As a representative of the Park Service,
 21 I think this issue of these kinds of transitional or whatever
 22 you call them communities is a key one. And one of my primary
 23 concerns with the process that we're going through now with
 24 respect to Terry's question, we've looked at some of the data
 25 that ADF&G's used, and it's quite clear, for example, in our
 26 analysis of Upper Tanana, that when you look at a community
 27 like Tok, that one-third of the households there are what you'd
 28 call customary and traditional users. That is, they use a
 29 variety of species, they share those resources. They don't
 30 make just one or two species. They have a long-term customary
 31 and traditional use of species.

32

33 But all these transitional communities have strata
 34 within them that a certain portion, like Kotzebue, a high
 35 proportion one might look at as customary and traditional, but
 36 a community like Nome, which is about 50/50, will have
 37 households that are primarily sports hunting households.
 38 They'll take one or two species. They don't share that
 39 resource with other households.

40

41 And my concern is as the resources decrease, for
 42 whatever reasons, then some choices are going to have to be
 43 made, and how do you make those tough choices? Now, Mr. Goltz
 44 had the -- his diagram up there yesterday, but that didn't
 45 really help in those tough decisions on when you start to have
 46 limit access to the resources, how is it going to be done?
 47 And my concern is that for subsistence users, if you include a
 48 community like Nome as a c&t, how do you make a decision when
 49 the resource goes down who has access to it? And then the

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concern is this: if you decrease the seasons and bag limits, then that affects subsistence users, because everyone's access is decreased. So that there are -- as the law requires, you go to an 804, then you have to decide between subsistence users, and how you characterize subsistence versus nonsubsistence users. And that's what Mr. Katchatag asked yesterday. What are the customary and traditional practices of the non-natives? And I think it's in these transitional communities that the Regional Advisory Councils are going to have the most difficult time making these decisions. And that unfortunately there's in some cases not a lot of information available.

12

13 CHAIRMAN EWAN: Sheldon?

14

15 MR. KATCHATAG: Thank you, Mr. Chairman. To address
 16 Mr. Callaway's concern, one of the things in our procedure is
 17 to determine and agree on which customs and traditions are
 18 longest standing, and then list all subsequent uses in the
 19 order of length of use or practice. This would provide a
 20 method of applying the 804 discrimination. In other words, as
 21 we said yesterday, last on, first off. In other words, if
 22 you're the -- if you're the person that came into Nome day
 23 before yesterday, then you would be the first person to be
 24 taken off customary and traditional use.

25

26 One of the things that we did in regard to that in our
 27 tribal management is that we accepted the Federal
 28 subsistence management program and regulations for all
 29 non-native subsistence users. It is then up to the Board as
 30 the over-all administrator of the Federal program to make the
 31 determinations however they might do it administratively to
 32 determine non-native customs and traditions. It's not the
 33 purview of the native people to say what the non-native customs
 34 and traditions are. We know what the native customs and
 35 traditions are, and they're to our way of thinking protected by
 36 the tribal government in its administration.

37

38 So I don't know if that answers your question, but
 39 that's how we handled it in our region. We adopted the then
 40 current Federal subsistence management program regulations as
 41 applicable to the non-native population within the region.

42

43 CHAIRMAN EWAN: Well, I don't know if we're making
 44 headway, I hope we are. We've talked about this quite a while.
 45 Any other comments? Yes, Mr. Thomas?

46

47 MR. THOMAS: Mr. Chairman, I hope I'm somewhere close
 48 with this observation. In terms of boundaries in various
 49 regions, my sense is that there's going to be uniqueness in

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each of those. I don't know that one would have a tendency to set a precedent for another. So I would think that we'd be wiser as we go along the process in each of the regions is to compare our processes in case some were struggling with theirs and see if they can adopt part of that or something like that.

6

7 But I agree with you. I think we're spending a lot of time on this.

9

10 CHAIRMAN EWAN: Yeah.

11

12 MR. THOMAS: It's a good area.

13

14 CHAIRMAN EWAN: I think that's a good suggestion, that we just compare what we're doing from time to time on this particular issue and I would say to Southcentral Council maybe we can bring this up again sometime in the future and -- anybody else want to comment before we move on? John?

19

20 MR. HOWSE: Just another point of clarification. I think Lee mentioned the lines and so forth and where they were drawn. There are some maps that are over at Fish & Wildlife Service that were drawn up when we started the program to define what was rural and nonrural, so those can be available.

25

26 CHAIRMAN EWAN: Yeah, we ought to have that distributed. Yeah. Mr. Borbridge?

28

29 MR. BORBRIDGE: Yeah, Mr. Chairman, just some general information, and I know that all of us are fully aware of it. And that is we realize that in looking at use of various species and looking at it in the light of the application of cost as a determination relative to the use of a species, there is entirely possible for the decisions as various members have indicated today to be unique, different than other areas. And it would appear that as to those decisions, that again as has been suggested, it would appear that those would not necessarily be precedence, and that's something we've been talking about.

40

41 And when we met, Mr. Chairman, as Council chairs and staff, when we discussed the on-going designated hunter project, you recall that the very question was raised at that time of possibly harmful precedence emanating from the work of whoever, whichever regional council was the first at bat to make a series of decisions. And the question was asked then by several of the Council chairs, well, can we be assured that there will be no harmful precedence resulting? Chairman Thomas was one. There are several others. And the response by staff

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and Staff Committee was, no, we couldn't. Well, today, again coming back to this meeting, we do have the kind of decisions that seem to reflect the particular circumstances in a region, and we seem to be develop a -- developing a comfort that we ought to be able to go ahead with the assurance that other regions are not going to be harmed inadvertently.

7
8 However, I would point out that there are some on-going debates. For example, we had discussed earlier customary and additional, and we had said, well, it's clear that the use of determinations as to rural and nonrural is the first eligibility hurdle. We have then discussed within the Staff Committee at some length over, I hesitate to say it, but some years, Mr. Chairman, whether or not c&t was going to be developed to the point where it, too, would become an eligibility determiner. And we've had some heated debate on that, considerable and prolonged debate on that matter. And we seem to be at the point where now we feel that the customary and traditional determinations should not be used or viewed as another eligibility hurdle to be cleared like rural/nonrural.

21
22 And then even the use of words, as Chairman Katchatag said, in looking at the customary and traditional factors. And there's a difference if you say "factors" and if you say "eight criteria," which seems to make it more binding.

26
27 And so I just want to suggest, Mr. Chairman, that while the specific examples resulting from specific circumstances as to how a species is used and boundaries and everything, are particular to that region. Always looming over this is the question of how we apply these various things. That I'd suggest, Mr. Chairman, is where some of the precedence may well result, not so much how you treat a species and its use, although there may be something there, but how one treats and regards customary and traditional determinations.

36
37 I hope this is help and not confuse -- muddy the waters, Mr. Chairman.

39
40 CHAIRMAN EWAN: Okay. Thanks for your comment. Yes?

41
42 MS. DETWILER: Yeah. I've been thinking about where the Councils are going to go after this two days of meetings here, logistically wise, what kinds of things they're going to discuss as a follow up to this meeting. And so I just want to throw this out on the table, based on the conversations that we've had this morning and yesterday. And my sense is that from here what the Councils are going to be discussing is within the context of that process that Sheldon laid out

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yesterday in which it looks like the group has agreed to by consensus, they're going to be discussing those line items up there.

4

5 And then based on the comments that I've heard people talking about today in the context of the Kenai c&t Peninsula (sic) determinations, some of the issues that I've heard to come up with regard to Kenai c&t, which might become issues for other regions in which the other councils may need to consider in their discussions on c&t uses in their regions are -- I have three of them written down, and one is how they're going to apply the eight criteria to their regions. A second one is how they're going to define communities or areas. And the third one is how they're going to deal with communities that have a relatively small segment of subsistence users.

16

17 CHAIRMAN EWAN: I didn't hear that?

18

19 MS. DETWILER: Pardon me?

20

21 CHAIRMAN EWAN: I didn't hear the last one?

22

23 MS. DETWILER: The last one is how they're going to deal with communities that have a relatively small segment of subsistence users. Transitional communities.

26

27 CHAIRMAN EWAN: Okay. You're probably asking the Southcentral Council how we're going to deal with

29

30 MS. DETWILER: No, I guess my sense

31

32 CHAIRMAN EWAN: Let me give you my view, okay? I don't think we're going to change our mind. I've said that all along. Unless the Board overwhelms -- overrules me, I'm -- I don't think we'll -- we went through a process. I don't see anything really compelling that would change my mind on what we did. Maybe there are some things that we ought to discuss further down the road like define a community, the method of the areas, but I think our determination was well thought out, well discussed, and like I say, unless the Council really overrules me, I don't think we're going to go back and go through that process again.

43

44 Mr. Basnar?

45

46 MR. BASNAR: Mr. Chairman, I'd like to reinforce what you said, and I heard a new, I guess it's a buzz word, this morning, "bottom up". That's what we did a year ago. We got together at the bottom and we sent it up. And I guess finally

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the message is getting around, so I think we're on the right track.

3

4 CHAIRMAN EWAN: Any other Council member want to respond? Yes, Gary? Mr. Oskolkoff.

6

7 MR. OSKOLKOFF: I think to sum it up from my perspective, and I'll do it from that, is that what we're asked to do here can't be done with the tools we're given to do it. What we need to do are experiences from this advisory committee to give a proposal to the Board, the years and years of experience and the logic that we apply to situations can't be put in a black and white description of a few pages. It can't be put in this matrix, because this matrix is just like when you try and define where the areas are. You start drawing lines, and when you start drawing lines, you start leaving people in, and you start leaving people out. And it just can't be done.

19

20 What we did through our deliberations, which were debated in some cases, we did the best we could given this set of tools that we have right now, and the ones that we've reviewed here. I think the minutes bear this out, of that meeting, that is right behind that matrix. And I was hoping that when we came to this meeting today, we would be given a new set of tools, tools that were flexible enough, tools that fit the actual situations that we found ourselves with when we had these discussions. And so far I think what the Council members are saying, at least I've heard it from the Chairman and Mr. Basnar here, is that we haven't seen a new tool that would allow us to do that, so what we would essentially be doing is rehashing the same issue again, using the same tools, using the same people, ending up with the same results. Our experience I don't think have changed radically in the last year from what our experiences were before that, the number of years before that. So I think we're stuck in that situation.

37

38 And I was talking with Mr. Brelsford during the break, and there were new tools, and there's some talk of -- and I hear people kind of skirting the issue of whether there may be a different way of approaching this or not, but no one's come out and said, plain and simple, that there is a new way of doing this, a new way that -- a new set of rules or regulations that we can use to accomplish this task. So I have to agree, I don't think we're going to -- I don't think we have need to liberate further on those particular issues until we see something that would be glaringly different, or at least substantially difference from the tools we had previously.

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1 CHAIRMAN EWAN: I recognize Mr. Thomas first.

2

3 MR. THOMAS: Thank you, Mr. Chairman. I think what
 4 Gary just said really represents my feeling about -- it
 5 represents a lot of what I think I heard in the past. And if
 6 we are looking for tools that offer more flexibility, I'm not
 7 so sure that we're not in the position of where we can select
 8 our own tools. I think the tools that we're trying to work
 9 with are something that could be changed. I'm making reference
 10 to the eight criteria. We talked about that yesterday, and
 11 they're regulations, and regulations can be changed. So if we
 12 needed to make some changes in those, I would hope that somehow
 13 before today that we give that some consideration, and take a
 14 look to see if we do want to change any of those. I'm not so
 15 sure there's enough time left in today to do a good job with
 16 that. But if that's a possibility, I'd be really interested in
 17 exploring those. Thank you, Mr. Chairman.

18

19 CHAIRMAN EWAN: Before I recognize Mr. Brelsford, I
 20 want to just, you know, remind everyone that we're just part of
 21 the process. We're advisory council. We do not have the final
 22 say. You know, it goes to the Federal Subsistence Board, they
 23 deliberate it on the recommendations that we make. And then it
 24 goes to the Secretary of Interior. If he doesn't want to sign
 25 off on it, he doesn't. So we're just part of the process.
 26 We're not really a final.

27

28 I think what the staff and everybody's trying to tell
 29 now is that we do a stronger voice in this whole process.
 30 And I like that. I think that if we have consensus on
 31 something statewide, I believe that they'll really listen to
 32 what we're saying. I like that.

33

34 MR. BRELSFORD: I wanted to try and take up the request
 35 be a bit more specific, and I think one of the first things
 36 we might do if we want to move a little further, is to take the
 37 Council recommendation about which communities use the animals
 38 in which areas, and then say, "What would be the right harvest
 39 regulations?" In the past we've discussed getting the
 40 eligibility decisions, the determinations done, and we've kind
 41 of left for a later date the seasons and bag limits on the
 42 Kenai Peninsula. I think part of what we're putting on the
 43 table today is maybe we ought to do that all at once. There
 44 might be some benefit in trying to figure out for the
 45 communities, you know, take the top example, for Hope/Cooper
 46 Landing/Whittier, when they hunt moose in Unit 7, in your
 47 judgment, what would be a good season? We have existing State
 48 seasons, we have no existing Federal seasons. Maybe we could
 49 put our heads to identifying harvest regulations, harvest

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seasons and bag limits that would accommodate the traditions that you guys recognize. So one specific tool is to try and tie these eligibility questions into specific harvest regulations, seasons, bag limits, methods and means.

5
6 I think another tool that's been described is the possibility of using some community harvest limits in some instances on the Kenai. That would be one tool that isn't out there now, but you may just -- you may feel it would be an appropriate solution. There may some parts of a community, or some parts of the region where community harvest limits would be a good approach to providing for subsistence traditions.

13
14 So perhaps at some point we would want to move into the area of what harvest practices, what times, places, methods and means of harvesting should be provided for in the regulations on the Kenai Peninsula.

18
19 CHAIRMAN EWAN: Any comments from the Council on what Mr. Brelsford just stated?

21
22 MR. LOHSE: Yeah, I'd like to -- I'd like to kind of go along with what you said, Roy. I don't see any reason to review what we did on the basis of what we did. I feel like we've gotten a lot of good information today, and we've had a lot of good sharing. And the thing that's come out the most is exactly what it says in objective one over there, the last half, where it says basically that it's going to reflect the regional diversity, and it's going to have to be flexible region by region.

31
32 We attempted to do something within the limitations that we saw in our region, which is basically we have a lot of large urban communities, we have very mobile communities. We have other communities that are recognized as nonrural. We've got communities that are recognized as rural that are, we've used the word "threshold" today, or nontraditional communities, whatever we want to use for it. And we have traditional communities. So we have the whole gamut.

40
41 And then you take something like Cordova, we have basically the same thing they have in Kodiak, we have isolated communities. We've got Cordova and Chenega and Tetitlik. I mean, these are places that aren't part of the road system. So here we've got a region that's got big mobility, and yet parts of the areas don't have big mobility, and yet -- so we cover a gamut that a lot of them don't.

48
49 I'm trying to think of what I've come out of -- from
50

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this meeting, and I'd like to be corrected if I'm wrong.
 Number one, I've come out with the feeling that the Regional
 Councils have more authority than we took for granted, that we
 Actually have authority region by region to make hard
 Decisions. And that basically the Board is there to look at
 our -- to look at what we've done from the basis of how does it
 7- does it put the resource in danger, and then to implement
 what we've done. In other words, basically that there is more
 9- that we have more authority than we ever thought of.

10

11 That we don't have to fear precedent. The fact that we
 do something different in our region doesn't tie like Sheldon's
 do Mr. Thomas to their region to do the same thing that we do.

14

15 And the other thing is that what we do is not cast in
 stone. What we do is capable of being reviewed. It's capable
 of being adjusted with time, especially in an area like
 Southcentral which is a changing area. I mean, we have
 communities I'll say -- I'll use the word "dying" or shrinking,
 and we have communities growing. And that's the way it's
 always going to be, as long as it's got the industry, it's got
 the road system, and everything like that.

23

24 So the things that we do today don't tie any other
 region, and they also don't cast something in stone for the
 future. I really think that that's kind of what I've come out
 from listening to everybody else, and if somebody sees where
 I'm off the track, I'd sure like to be corrected on that.

29

30 CHAIRMAN EWAN: Sheldon?

31

32 MR. KATCHATAG: Thank you, Mr. Chairman. One of the
 things that I brought out in discussions with Mr. Goltz
 yesterday, and in our discussions yesterday, was my concern or
 my interpretation of Title VIII of ANILCA, because it invokes
 the constitutional authority of Congress over native affairs,
 it's my contention that Title VIII in that it's referenced to
 natives, and the invocation of its constitutional authority
 over native affairs, to my way of thinking, that makes it
 Federal Indian legislative with regard to natives.

41

42 One of the things that has been pointed out is
 Anchorage is the largest native village in the State, having a
 population in excess of 20,000 natives residing here in the
 Greater Anchorage Area, and I think that with the way that
 ANILCA has been written with the rural preference, that I see
 it as a violation of the tribal rights of those native people
 residing in the Anchorage area with regard to their customs and
 traditions as they have been brought up to practice by their

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family and friends and fellow tribal members. I think that I want it on the public record that I believe Title VIII in regards to natives is Federal Indian legislation, and that it in fact violates the tribal rights of native people residing in Anchorage, because it does not take into consideration that regardless of where they live, they still have been brought up to practice these customs and traditions of their original tribal government. So I just wanted to put that on the record, and that that would be -- if you go through the process of looking at customary and traditional use in any area, even in the Anchorage area, you will see that there are people that practice customs and traditions that they have been brought up in as tribal members. And that these are being discriminated against by the Act itself.

15

16 Thank you, Mr. Chairman.

17

18 CHAIRMAN EWAN: Okay. Anybody -- Yes.

19

20 MR. RABINOWITCH: In a follow-up to your request for corrections, I would offer one, and I offer this in the most respectful way that I can, in the spirit that you sought it. And it's one word. You used the word "decisions". I'd suggest that's incorrect. I suggest the correct word is "recommendations". I think everybody knows that.

26

27 MR. LOHSE: Right. You're right. yeah.

28

29 MR. THOMAS: Mr. Chairman?

30

31 CHAIRMAN EWAN: Yes, Mr. Thomas?

32

33 MR. THOMAS: Another clarification to that, and you're right, there is more authority, and secondly 805, the only other place it's referred to authority, other than the Council, Regional Advisory Council, is the Secretary. It refers to the Secretary. That's Babbitt in this case. So there's no other authority mentioned, but those -- the recommendations do ultimately wind up there.

40

41 CHAIRMAN EWAN: All right. Sheldon mentioned something that we talked about a little bit yesterday. Does Council members have any comments on that particular issue?

44

45 We talked briefly about that also at the Council meeting. Myself, my position is ANILCA really was looking out for the natives I think. Something Congress saw that needed to be done to protect natives' hunting and fishing tradition.

49

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1 In addressing the Alaska Native Claims Settlement Act,
 2 and I didn't lobby for that particular bill, but I know those
 3 that did lobby for that bill think that that was put in --
 4 placed in there for -- to really to protect native and to
 5 continue a lifestyle that the natives have been accustomed to
 6 for a long time. I believe that in my heart that is true.

7
 8 But the law says native and non-native, and that is
 9 what we're dealing with today.

10
 11 I don't know about the urban and natives. I really --
 12 it's a tough issue to deal with. That's -- the State is
 13 wrestling with that issue. Here I don't know how we can get
 14 involved in it.

15
 16 Could I hear from Fred here? This is Fred John.

17
 18 MR. JOHN: I'm from Mentasta, and it's a pretty
 19 traditional tribal village. I consider myself tribe.

20
 21 I sit here and I listen and I'm trying to figure out
 22 what to do, how to vote, be fair and everything, but deep down
 23 I agree with Sheldon that the law was made for the original
 24 people of Alaska, the native.

25
 26 And I live in Mentasta, and there's another town below
 27 called Slana that's all non-native. And I sit there and I
 28 can't figure out how they could be traditional and customary
 29 compared to what we -- you know, our village is almost 99.9%
 30 native, and we live a customary -- I know my custom, my
 31 tradition, and here I sit and I try to make, you know, a
 32 non-native, you know, to have customary and tradition, and it
 33 kind of confuses me, kind of like Gary just said, putting a
 34 square peg in a round hole.

35
 36 I'm getting a lot of good comments, and I'm learning a
 37 lot, but what I'm trying to say is I think in ANILCA there's a
 38 law that says that non-native traditional and social and native
 39 traditional and customary. That already made a distinct
 40 difference there. And I see that there, and then sometime it's
 41 sometime I sit there and we're trying to make, you know,
 42 everybody equal and everything, and I just couldn't figure out
 43 sometimes what to do, what to say. I have a hard time. What I
 44 want to say is that I'm trying to make decision, I'm trying to
 45 be fair. I'm trying to be as fair as I could, but I'm sitting
 46 here and listening to -- as a traditional and customary person,
 47 and I'm trying to make it over for all people t&c. I --
 48 sometimes it's very hard for me. And I'm learning.

49
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1 CHAIRMAN EWAN: Yeah, Sheldon, and then

2

3 MR. KATCHATAG: Thank you, Mr. Chairman. This -- again
 4 we're back to the threshold communities, and again in light of
 5 my earlier stipulation that I consider Title VIII Federal
 6 Indian law with regard to natives, I have grave concerns
 7 regarding sometime in the future when those threshold
 8 communities go over that threshold and are considered no longer
 9 rural and those native people living in those threshold
 10 communities will automatically lose the right to practice their
 11 customs and traditions. And again I see that as a violation of
 12 their tribal rights that's built into Title VIII of ANILCA,
 13 because through no fault of their own, just by the in-migration
 14 of people to their village, city or region, that they will be
 15 automatically disallowed from practicing their customs and
 16 traditions as they have been brought up to. So that's another
 17 of my concerns with regard to customs and traditions of tribal
 18 people that are living not only within Anchorage, but also
 19 within these so-called threshold communities.

20

21 Thank you, Mr. Chairman.

22

23 CHAIRMAN EWAN: Mr. Titus.

24

25 MR. TITUS: In dealing with customary traditions, I
 26 know that we are gathered here, and we are trying to put
 27 together a puzzle and come out with a nice big picture of what
 28 subsistence or what customary and traditional use is supposed
 29 to look like. The reason I believe that I'm sitting here is
 30 because dealing with this issue is because of the voices of my
 31 forefathers. I know that they knew what it was, and I have a
 32 small -- I just have a small picture of what they mean. And I
 33 know that I can't stand in the place of anybody else in trying
 34 to tell them what to do. But I can fill in for what I believe.
 35 I can tell you about my customs and my traditions, but I can't
 36 tell you all of them, because as a native I am also a clan
 37 member, and there are certain things that we can't talk about.
 38 And how are you going to -- how are you going to deal with
 39 customs and traditions with things that I can't tell you?

40

41 I know we'll never get to the true sense of what we're
 42 trying to achieve. Right now we have current -- we have
 43 subsistence regulations right now. We have State and Federal
 44 subsistence regulations that says you can hunt moose at such
 45 and such a time, or you can hunt caribou such and such a time.
 46 I tell you right now people at home throw that law out. That
 47 law is non-effective to the native community as of right now
 48 statewide. It's only -- like Sheldon said earlier, it's only
 49 regulations for the non-natives, because as tribal members, we

50

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Have our own subsistence law.

2

3 CHAIRMAN EWAN: Thank you, Mr. Titus. I'm going to
4 recognize

5

6 MR. O'HARA: Pardon?

7

8 CHAIRMAN EWAN: I recognize you.

9

10 MR. O'HARA: We've blown the agenda completely out of
11 the water. We might as well just keep talking about things I
12 guess as they come along. Let me muddy the waters a little bit
13 more.

14

15 Where is that legal voice from the back of the room
16 over there. Yeah. That told us yesterday this is really easy
17 if you don't complicate it. Thanks a lot.

18

19 You know, we're not living in the same times we lived a
20 long time ago, and I have enough grey in my beard to know that
21 when I grew up in a village of 40 people that, you know, I was
22 taught how to splice a dog line, and make a dog harness, and I
23 hopped a lot of wood before I ever saw a chainsaw. But now I
24 ride around in my snow machine with a cellular phone. Quite a
25 different than -- things are different than they were
26 before. And yet my people still, you know, we use seal oil and
27 different things that we've always used, and we want to
28 continue to do that.

29

30 And when you -- the Southcentral Board here today, I
31 really appreciate you coming and sitting up here and sharing
32 some of these things with us, because we're all going to learn
33 from the different regions. And we talk about the boundaries
34 and our tradition and customary use, I guess to complicate
35 things more is that the Legislature is going to have to comply
36 with Title VIII at some time. And if they don't comply with
37 Title VIII, and we -- the question I need the answer today, and
38 I'll have to ask our lawyer this, is how long does the State of
39 Alaska have to do this? And let me give you an example. Over
40 on our side, Peter, we've got the Becharof Refuge coming along.
41 Okay. So my job as a Council member is to make regulations
42 for our people on that Federal land. Togiak's land over there.
43 Peter. Okay. Bordering that is the State of Alaska's lands.
44 But Peter and I are stuck with the State regulations, right?
45 Alaska Department of Fish & Game makes regulations on Federal
46 lands. In other words, the number of caribou that can be
47 taken, and the time they can be taken is regulated by Alaska
48 Department of Fish & Game. Am I right? Am I right? That's
49 true. That's how -- that's -- the bag limit and season are

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determined by the Alaska Department of Fish & Game. We work with them on that issue.

3

4 MR. SAMPSON: Allocation. Allocation is what the State

6

7 CHAIRMAN EWAN: Did you want the attorney to

8

9 MR. O'HARA: No, I want to ask the attorney the question on this fall, the Peninsula caribou herd declined, and then the sports hunter and the people from Pilot Point and Uqashik and Egegik hunted those animals until they got to South Naknek, and then when they crossed into South Nak, into State land, Alaska Department of Fish & Game said, "no more hunting." So when they got up to the borders where we could get them, then we couldn't hunt, because we're the big community that would kill a lot of animals. So it didn't do us any good. I have no authority on State land as a Council member, do I? No.

19

20 So the question I want to ask is when that animal crosses from Federal lands into State lands, there's going to have to come a time when our voice is going to have to be heard saying, "Yes, we want something to say about that animal as they cross all the way up to these areas, and they get to us and now there's not enough for us to have." That's just one case. Because they cross boundaries that we had no jurisdiction over. And the question is, now long are we going to be waiting until we have something to say about that? That may not be a fair question to ask you, Counselor, but do you have any idea?

31

32 CHAIRMAN EWAN: Yeah, go ahead and respond if you want to.

34

35 MR. O'HARA: Would you mind, Mr. Chairman?

36

37 MR. GOLTZ: It's not an easy answer, but if you'd let me go to the board, I can sketch in. I think I can pull together some of the threads.

40

41 CHAIRMAN EWAN: Let me ask this, okay? It would probably take you a while, but it's getting close to lunch time. Do you want to have him do this before lunch?

44

45 MR. O'HARA: No, he can do it after lunch, would be fine. Yeah.

47

48 CHAIRMAN EWAN: It doesn't matter to me. It's up

49

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1 MR. O'HARA: I didn't mean to make it a long,
2 complicated

3
4 MR. GOLTZ: It will only take me five minutes.
5

6 CHAIRMAN EWAN: Oh, go ahead. Come on.
7

8 MR. GOLTZ: Somebody called it ANILCA 101 that we went
9 through yesterday, and I think that's a pretty good place to
10 start.
11

12 Last time I was at one of these public meetings with
13 the State, I got some fan mail from them. Actually what they
14 sent turned out to be helpful. It was clear to me that we're
15 not that far apart. And I think I can help Mr. Callaway and I
16 think Sheldon, too.
17

18 Did I spell that right? Okay. We started here
19 yesterday. This is the entire body of users, people who ANILCA
20 allows to take animals on the public lands of Alaska. At the
21 top of that is the urban. And that's the chart we used
22 yesterday up there. The consideration here is the sport, and
23 that's what we're concerned with, that's what we're protecting.
24

25 All the way down here beneath that is the rural,
26 however we define that. And what we're protecting there is the
27 wet uses, however we define those. And there's no place to go
28 look to get a list, because they change. The land has its
29 seasons and its movements and so do uses.
30

31 If this group has to be reduced, we go down to the
32 historic level. And what we're protecting there then is the
33 customary and traditional users, the individuals that Sheldon
34 and others are concerned about.
35

36 The requirements of the statute are simple, at least in
37 the sense that unlike most Federal statute that give you a
38 matrix you cannot understand without several legal committees
39 (oh), this gives you clear lines. It's when you approach these
40 ones that you get your problems as Mr. Callaway pointed out,
41 and there's nothing particular in ANILCA that tells you how to
42 approach that. Your best tool there is common sense, and a
43 consideration and a feel for the land and its resources. There
44 are ways to cross these lines in nondisruptive manners. If you
45 have to choose between a popular urban hunt and one that is
46 already under permit, you choose the one that's already under
47 permit, because public expectations have already entered this.
48

49 And I think you're going to find that it doesn't have
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to be difficult if you understand that this is not a boom, boom, boom kind of situation. It's a steady progression. It's slow, it's gradual usually, and good management keeps you away from those lines. It's -- in some cases where we have the extremes, like where we lost a herd of caribou for five years or something like that, we tend to go all the way down and all the way up. If we sit here and focus on our problems, they can be -- seem insurmountable. But if we focus on the land and its resources, they're probably not.

10

11 Now, as for how you draw the lines and how you do some of these things are going on, remember the law doesn't require you to be right. The law requires that you be rational. Fairness is a problem for all of us in this, and we all have to struggle, based on where we started out. And that's something we all have in common. That's not unique to anyone.

17

18 As to Sheldon's point, and it's a good one, maybe it's not entirely fair, especially for those people who through no fault of their own are forced into Anchorage, or through no fault of their own are now living in a community that's several times what it was when they chose that. I have no answer to that. It's not a perfect system. We can't make it perfect, what we can do is try to improve things as they are now.

25

26 MR. O'HARA: I asked the question of when is the State of Alaska going to comply with Title VIII, that's the question I have.

29

30 MR. GOLTZ: I thought I was going to get away from that. There are two other things that Sheldon pointed out yesterday. Underneath this is the resource, that states we always try to maintain that.

34

35 As to the question of the State, sharpen your pencils, boys, this is a personal view, and I've requested of some of you privately, I was hoping not to have to do it publicly, but here goes. Whatever happens in Katy John, the litigation on navigable waters, whatever happens to the petition, at some point somewhere the Federal government is going to be in a position where it's going to move off Federal lands is my personal view.

43

44 MR. O'HARA: Is going to move what?

45

46 MR. GOLTZ: They're going to -- we're going to be moving off Federal lands onto State lands. There is authority within the Federal law for us to do that. And that authority kicks in when the State regulatory system is having a negative

50

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1 impact on the Federal regulatory system. Now, as a practical
 2 matter, the way we're probably going to approach that is when
 3 the biologists tell us that we cannot do our Federal job
 4 without extending our reach off the Federal lands. In other
 5 words, it's the biology that's going to drive that litigation
 6 for that legal decision.

7

8 It's not inevitable that we should conflict with the
 9 State. If we would work together, particularly at the level of
 10 the advisory committee, I think we would find reasons for hope,
 11 and that we could work together. If people are looking for a
 12 fight, they can make it. We could make it a fight. We could
 13 get embroiled in the politics and all of this. But there's
 14 nothing in the law either that requires that conflict, and
 15 there's nothing in the law that prevents us from extending our
 16 jurisdiction where we have to.

17

18 MR. O'HARA: Well, this Council, if they think they're
 19 having fun now, you wait until you take over navigable and the
 20 State regulations.

21

22 MR. GOLTZ: Well, I'm not predicting the outcome of
 23 that lawsuit.

24

25 In a couple cases, I hear both sides. In a couple
 26 cases where the Feds tried to reach when I was with the State,
 27 what we did was say, "Hell, no. Hell, no," until it came to
 28 28, and then we changed our regulations to have it (ph), so it
 29 didn't look like the Federal case. And that could happen.

30

31 Also, if the biologists drive this thing, which is
 32 really what ANILCA intends, a lot of this conflict is going to
 33 be reduced to the level of rhetoric. The State's biologists
 34 are awfully, awfully good, and their predictive capacities are
 35 increasing year by year. And we've got the Federal biologists
 36 with the same set of qualifications, and if we could get them
 37 together, there's reason to hope there.

38

39 MR. HOWSE: Keith, the request -- the notice that went
 40 the Federal Register requesting comments on the petition to
 41 move off of Federal public lands onto State lands is just
 42 exactly what you're talking about. That was signed. I don't
 43 know if it's been published yet, has it? It has been
 44 published. It's out for 60 days of public review right now
 45 when?

46

47 MR. KNAUER: That's correct. It appeared in the
 48 Federal Register on February 2nd.

49

50

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1 MR. HOWSE: February 2nd. Everybody ought to read that
2 carefully, because that is what's called a "Where 2/Where 3"
3 question in Katy John, which extends the Federal regulations
4 onto State and private lands.

5
6 MR. GOLTZ: That's one way to do things, and that's --
7 the way that's set up now is for a great big Federal/State
8 battle. Another way

9
10 MR. HOWSE: And that's brewing, too.

11
12 MR. GOLTZ: Yeah. But another way to look at this is
13 to take the specific examples, case by case, worry -- keep our
14 eye on the ball and worry about the resource and the users and
15 let some of these heavy artillery shells go over our heads.

16
17 CHAIRMAN EWAN: I think we are approaching the lunch
18 hour. We're talking about something that could happen or not
19 happen right at this point I think. The Katy John case could
20 either way. Hopefully that case will

21
22 MR. GOLTZ: Oh, I had one other

23
24 CHAIRMAN EWAN: be decided in Katy John's favor,
25 and then we will have a problem as you say. I think you --
26 just go ahead. I'd like to summarize what we're talking about
27 here and maybe move on to something else this afternoon. I'd
28 like to close up for lunch here pretty quick.

29
30 MR. KATCHATAG: Okay. Thank you, Mr. Chairman. The
31 question I have for Mr. Goltz is what is the statutory
32 authority that will allow the Federal government in the
33 interest of protecting the resource to extend its subsistence
34 management onto State lands? I know in the very beginning of
35 Title VIII of ANILCA it states that on public and other lands
36 in Alaska. Is that more or less the basis of what

37
38 MR. GOLTZ: No.

39
40 MR. KATCHATAG: you're talking here?

41
42 MR. GOLTZ: And with the Chairman's permission, let me
43 handle a couple of questions quickly.

44
45 No, the basis for our authority is constitutional.
46 It's the Federal authority over public lands, and the
47 development of that rule of law has been in the courts. It
48 started with -- it really started with the Wild Horses and
49 Burrows Act where the critters wouldn't stay on Federal lands
50

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and when they went off, people shot them, and the Supreme Court said, no, those are -- that's a Federal interest and the Federal regulation is going to apply wherever those animals are.

5

6 I was just going to point out that I wouldn't worry too much about not being able to define subsistence in your own minds. There's an awful lot of things that the law can't deal with. The law's definition of subsistence is inadequate, it will never be adequate. I think it's the limitation of language. There's a lot of things that all of us do on that that we can't adequately define. But that doesn't mean

13

14 CHAIRMAN EWAN: Yeah, one more question or comment. Go ahead.

16

17 MR. OLSEN: Yes. As I look at this, I also have thought over subsistence and c&t. To me they're clearly apples and oranges. Contrary to that in the language here, in 803, is as used in this Act, the term subsistence means the customary and traditional uses by rural Alaskan residents. Well, here we are trying to determine who is really eligible and who is not, when it clearly defines that subsistence uses as defined as traditional uses by rural Alaskans, so those coming that are using subsistence do not have a customary and additional use, so why is it part of our concerns?

27

28 MR. GOLTZ: Over in this, it's not individuals, it's the uses we're protecting here. For better or for worse, a happy from the streets of New York can come in and become a rural resident. It's down here where we're protecting the user. And I think Sheldon has a pretty good explanation as to how that all fits together.

34

35 MR. OLSEN: Then this definition is

36

37 MR. GOLTZ: Hopefully we'll never get there. I don't know. We're not there now. We're way up here some place.

38hn?

40

41 MR. MORRISON: Yeah. I just wanted to make one comment regard to the authority of the biologists in this situation

44

45 MR. GOLTZ: I was talking about the skill, not the authority.

47

48 MR. MORRISON: We realize we're not nonpareil in that category, but

50

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1
2 COURT REPORTER: Excuse me, sir, would you please speak
up?
4
5 MR. MORRISON: What we're
6
7 COURT REPORTER: I'm sorry, I'm not picking you up too
well.
9
10 MR. MORRISON: What I wanted to point out
11
12 COURT REPORTER: You don't have to
13
14 MR. MORRISON: especially on the
15
16 COURT REPORTER: Leave it on the table, please.
17
18 MR. MORRISON: Leave it on the table, okay. Ultra
sensitive. Yeah, how's that.
20
21 COURT REPORTER: My ears are.
22
23 MR. MORRISON: Are your ear drums okay?
24
25 By and large biologists, especially the State
biologists, and I would assume that probably a lot of the
Federal biologists as well, see their role in this as being
pretty much focused on the welfare of the resource, the
wildlife and the fish populations that people want to use. But
when it comes to a question of allocation between these
different categories of users, then we have to back out of the
picture and leave it up to the Boards, for example, to then
enter this arena of who gets to do what.
34
35 MR. GOLTZ: I understand, John. I was more -- that
comment was meant to say that the biologists can tell us what
our resource base is and where it moves. What habitat. And
that's what I meant by saying
39
40 CHAIRMAN EWAN: Okay. I'll take control again. This
is the Southcentral Council meeting. We'll recess for lunch.
42
43 (Off record)
44
45 (On record)
46
47 CHAIRMAN EWAN: The meeting will come back to order. I
guess this afternoon we're just going to continue on with our
discussions on issues. We left something from this morning.
50

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We'll continue that. Are we done with the presentation in the back here by the attorney? He's not here, right?

3

4 MR. GOLTZ: Right here.

5

6 MR. BASNAR: There he is.

7

8 CHAIRMAN EWAN: Oh. Are you done then with yours?

9

10 MR. GOLTZ: I'm done. I'm available for questions.

11

12 CHAIRMAN EWAN: Does somebody have any questions of --?

13 Okay.

14

15 MR. HENRICKS: I've got a question.

16

17 CHAIRMAN EWAN: Yes.

18

19 MR. HENRICKS: Does ANILCA extend out to the Outer Continental Shelf?

20

21 MR. GOLTZ: I don't think so, but it's not clear that
22 something would happen on the Outer Continental Shelf that
23 is impacting subsistence, that we couldn't regulate it. But
24 on the face -- on its face, it does not, no. It's within the
25 State of Alaska. And actually that issue is in front of the
26 U.S. Supreme Court.

27

28 CHAIRMAN EWAN: Okay. Does either one of you have
29 anything further at this point here?

30

31 MR. POSPAHALA: Well, I think, Mr. Chairman, if you'll
32 allow me, we had earlier on thought of perhaps carrying on a
33 discussion of the specific issues a bit further, but upon some
34 reflection it appears as though most of that material would
35 best be the subject of the decision making session that the
36 Council, this Council will be accomplishing toward the end of
37 this month, so I guess our preference would be to perhaps defer
38 that discussion.

39

40 And although I was out of the room at the time, Taylor
41 indicated that Mr. Lohse did a very good job of summarizing
42 some of the salient points that have been brought up in the
43 analog today, and it would satisfy my purposes I think in
44 general if you'd perhaps summarize those for the record.

45

46 We can discuss briefly, and it will have to be brief,
47 because I don't understand some of the details of the process,
48 but we do have the issue to deal with as far as how the Council

49

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recommendation on a customary and traditional use determination would be handled between now and let's say April or whatever, and I can address that briefly. And then I think from my standpoint we'd be finished.

5

6 So with that I'll do the best I can to summarize the points that Mr. Lohse summarized earlier. If I misquote you in any manner,

9

10 MR. LOHSE: I'll tell you.

11

12 MR. POSPAHALA: please let me know. First of all would be the identification of the -- identification of the fact that the Councils perhaps have a much stronger role in this program, and more authority than perhaps was perceived at earlier points in time, and I think that was an important part of the dialog in yesterday's meeting and was well reflected in the discussion here today.

19

20 Secondly, that the Board's role is strongly focused on avoiding risks to the resources, and that it's their duty and responsibility to the extent possible to work very closely with the Regional Councils. There again I think that's been a focus of our efforts over the last few days.

25

26 Thirdly, that there does not have to be a threat of over-all fear of precedential effects from one Council to the other, that regional solutions to individual problems certainly are part and parcel to this program, and can be accommodated.

30

31 And the last point that we have listed here would be that there's certainly the opportunity to reflect on decisions made by the Councils and endorsed by the Board to go back and revisit those as opportunities allow over time. So that any of the actions taken are not embedded in concrete forever, but can be revisited.

37

38 So those are the -- at least I think a very good summary of where I saw the discussing ending up this morning.

40

41 CHAIRMAN EWAN: All right. Thank you, Mr. Pospahala. And I'd like to ask Taylor if you would just -- I know you discussed what you saw coming up ahead for the Council, Southcentral Council, but maybe for the rest of the Council members, just repeat what you told Lee and I here earlier?

46

47 MR. BRELSFORD: I'd be happy to offer a small part of that. I think perhaps

49

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1 CHAIRMAN EWAN: Yeah.

2

3 MR. BRELSFORD: Dick had in mind bringing all of
4s together and talking about how to prepare a package that
5ould go to the Board in April and so on, but the small point
6hat I was

7

8 CHAIRMAN EWAN: What I'm thinking about are the
9articular issues that we're going to be taking up at that
10me, I think just to sort of prepare us little bit.

11

12 MR. BRELSFORD: Right.

13

14 CHAIRMAN EWAN: Yeah.

15

16 MR. BRELSFORD: I think one of the things we want to
17ok -- think about is the Council has identified which
18ommunities have c&t uses in the units on the Kenai Peninsula.
19e need to also have some seasons and harvest regulations in
20nd so that there's a complete package to implement next
21egulatory year, so so far we haven't worked out ideas about
22g limits or open seasons in the units on the Kenai Peninsula,
23d that will need to be done I think before the package goes
24 the Board. So that's really the point that I was talking
25out, touching on with

26

27 CHAIRMAN EWAN: I think that's important that we know
28at, that we all know that. Study the game books a little bit
29d all that, yeah, before we -- for the next meeting.

30

31 Any comments from the Council? Yes, Lee? You or Ralph
32xt?

33

34 MR. BASNAR: Yeah, Mr. Chairman, Taylor was asking me
35at sort of information I thought we needed in order to go
36rward with making recommendations for seasons and bag limits,
37d I said I'd like to know the health of the resource to begin
38th so we know where to depart from. And I only offer this as
39starting point for some of the other Council members, to --
40at tools do we need to help

41

42 CHAIRMAN EWAN: Is there any information that we can
43en verbally get right now, how things are going? Maybe it
44ould be beneficial for the other Council chair to hear how the
45ose and caribou are doing and all that.

46

47 MR. BRELSFORD: I think it might be a little more
48elpful to try and tie some of that together, summarize some
49aterial, rather than just land on key points verbally.

50

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1
2 CHAIRMAN EWAN: Okay. If you -- okay. Ralph?

3
4 MR. LOHSE: Yeah. I have -- it's -- Lee said some of
the things that I was going to say. Basically what I see is if
we're going to have to deal with this, is that there is a bunch
of information that we need ahead of time so we have a chance
to look at it before we sit down and deliver on it. And one of
the things we need is the health of the resource. I'd also
like to know what the current seasons are, and what's in place
at this point in time. If there's been any information as to
different communities lack, in other words, not having their
needs met. I would say again we're going to have to go back
to the fact that this only applies at this point in time on
Federal land, and so we need to see what kind of hunts are
taking place on those -- on that Federal land, or any
adjustments that need to be made in those hunts in order to
meet the customary and traditional findings that we had.
That's the kind of stuff that I could see that we're going to
need a package on that kind of thing before we ever sit down
and try to make any decisions on seasons or back limits, if it
goes to that extreme.

23
24 I kind of looked at it as that we would give direction,
and that the seasons and bag limits would be filled out by
administration, you know, but be that as it may, if we have to
come up with directing communities to certain areas, we need to
know something about those areas, the resource health in them,
and the amount of resource users that use them. I mean, we
don't want to start something that's not already there, or
cause something to grow and be an impact on it that's not
currently an impact.

33
34 CHAIRMAN EWAN: Okay. Thank you. Any other comment?
We're near the end of our meeting here, our agenda. Maybe we
ought to just open it up for just any general comment that
people might want to make?

38
39 I would like to go back to boundaries a little bit, and
put another angle to it, and that's something that I believe
the guy from Bristol Bay area mentioned, that when you're on
Federal land and all of a sudden you're on State land. Now,
what we've got to be aware of is that there's really in some
instances no boundary really out in the woods. You're out
here. I think from time to time rural people have got to be
assured that they won't get into trouble if they're near a
boundary line between Federal/State/native corporation lands
and so on. I'd like to hear a comment about that. I know that
do that locally in our area, in the Copper River Basin, to
50

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the National Park Service. They assure us that, "Hey, if you're across there, 200 feet across the line, don't worry about it." I want that kind of assurance, you know, that people in rural areas won't get in trouble because some State game warden or somebody come along and arrest them. Yes, John?

MR. MORRISON: Mr. Chairman, one of the problems the State has encountered in this is where there are differences of property boundaries, different ownerships, two different seasons, Federal permit on one side and a State on the other, and people aren't sure which side they're on. Our regional supervisor in Fairbanks, Chris Smith, has come up with a recommendation that's somewhere in the process of being looked at, that we have a joint Federal/State permit that would be good on either location and either season, and get around that problem. Now, I don't know just where that is. He sent a request to Juneau that it be looked at, and, of course, our folks will have to talk to the Fish & Wildlife Service and other agencies, the other land managing agencies about this prospect, but it seems to make sense, and would do away with a lot of this kind of concern.

CHAIRMAN EWAN: Any other comment about anything? Any issue? Go ahead, Mr. Olsen.

MR. OLSEN: Yes. This is Mark Olsen here from Kodiak Region. We have a different color here on boundaries, as per our last Council request to the Secretary, and that is the fact the long stand of area that Kodiak/Aleutians covers. It is such a distance that even dog sled is not a viable means of transportation. With this span here, we do not have adequate representation from our Aleutians and Pribilofs that encompasses within our boundaries. We have requested that an additional area be brought into the plan for that reason. We have looked at even getting Council members from different areas of the Aleutians to work with us on it, but transportation and communications aren't always good at the best. But I guess I am just mentioning this and hoping that the Councils can see another small problem we have in boundaries and representations of need.

That's all I have. Thank you.

CHAIRMAN EWAN: Does anybody want to comment about the Kodiak area concern?

MR. POSPAHALA: Well, we're -- I'm aware of the request. No specific action has been taken on it at this time. Apparently there would be some question about whether or not

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there are resources within the proposed area in the new region
 in the Aleutians that fall under the purview of Title VIII as
 it exists now, which is a consideration for -- in other

4
 5 MR. OLSEN: So these people

6
 7 MR. POSPAHALA: words, Federal land holdings.

8
 9 MR. OLSEN: In other words, with that explanation,
 these people are kind of left out in the cold either way?

10
 11
 12 MR. POSPAHALA: Well, with regard to the existence of
 Federal public lands, yes.

13
 14
 15 MR. OLSEN: Certainly. So they basically don't have
 any representation on the subsistence issue?

16
 17
 18 MR. POSPAHALA: Right.

19
 20 MR. OLSEN: That's what I'm trying to get at. Thank
 you.

21
 22
 23 CHAIRMAN EWAN: Okay. We heard your concern.
 24. Titus and then Mr. Borbridge.

25
 26 MR. TITUS: Getting back to earlier before lunch break,
 Dan O'Hara brought up a question about if the State Legislature
 does not comply with ANILCA, he brought up the question about
 Federal take over on all the lands within the State of Alaska,
 and I'd just like to direct this question to our lawyer here,
 what does this include navigable waters?

27
 28
 29 MR. GOLTZ: In my personal opinion, I think it would.
 But I wouldn't take too much -- I did not mean to say that we
 would end up taking over the entire State, however, that's
 theoretically possible. I think what we will be doing is
 responding to specific resource needs. If, for example, a herd
 of caribou started on Federal lands, took a big swing through
 State lands and came back on Federal lands, and between there
 there was a State firing line, like they've had in Yellowstone,
 we would probably reach off and say, "no, you cannot set up a
 firing line. You've got to allow those animals to return to
 their subsistence base." And there are probably other
 examples. So we wouldn't be reaching out and taking over the
 State lands, but we would be reaching out for a Federal purpose
 and saying "we are not going to allow the State to interfere
 with those animals in such a way that you diminish the
 opportunities of the Federal subsistence user." And it would
 be on a case-by-case basis.

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1
2 MR. OLSEN: Yeah, the reason I asked this question was
3 the closure of the State fisheries on the Yukon and Tanana
4 Rivers, and also I believe it was the Kuskokwim of coho salmon.
5 They didn't allow any subsistence fisheries on that area. And
6 the majority of our subsistence is -- not majority, but most of
7 it is fisheries. And most of the -- most of the rural villages
8 are located on a river, or on a water system. Okay. And

9
10 MR. GOLTZ: Well, you guys have placed me in very
11 dangerous waters here, but I'm giving you the best I know how
12 to give you.

13
14 The Department's position is that Title VIII of ANILCA
15 applies only to Federal lands, and Federal lands are those that
16 you see on a map. Basically the land and not the water. And
17 that is what ANILCA says.

18
19 There is also the common law precept that if a state
20 jurisdiction interferes with a Federal right, then the Federal
21 entity has a right to reach off. And what you're telling me I
22 think is that if the Federal Government is really protecting
23 subsistence, they would be out in those waters right now,
24 because subsistence is probably 80, 90% fish, and all I can say
25 that is factually you're right. It's not the way the law is
26 being interpreted right now. It's in front of the courts.

27
28 I think if there were a situation -- the more likely
29 situation for the Federal Government to go out right now is
30 that if there was a cut-off fishery say in one of the paths --
31 commercial fisheries in one of the paths, and that intercepted
32 runs that went high up in the systems, I think we'd be more
33 likely to act in that case than we would the broader and take
34 the whole system.

35
36 I don't know all the answers. This is an evolving
37 process. It's -- the legal structure here is almost as dynamic
38 as the subsistence structure, and if we try to pin it down too
39 much, if you try to define it too closely, you're going to lose
40 it. I think what you have to do is keep your eye on the
41 subsistence user and the resource, and then deal with this on a
42 case-by-case basis. Hopefully, in the best of all possible
43 worlds, the State and the Federal jurisdictions will be able to
44 operate at the advisory committee level, and we can
45 coordinate these things. And the numbers indicate that that's
46 entirely possible. When you -- when you think of subsistence
47 use as maybe four to 8% of the entire resource use overall
48 statewide, you'd think that there must be room in there, if we
49 don't let the words tangle us all up and get so enamored in our
50

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bureaucratic structures that we forget our purposes, I think that can be done.

3

4 CHAIRMAN EWAN: Yes.

5

6 MR. ANVIL: Mr. Chairman, I remember what he meant about the closure of the subsistence at the Yukon and Kuskokwim area, and I think these machines that the Fish & Game use, you know, to counting fish, and they're not accurate. The rivers are wide, that Yukon and Kuskokwim, and then they put their machines on the shore somewhere, or mouth of the little slough while the other fish are going on the other side, they don't count those, you know. And I think they shouldn't -- they shouldn't be interfering with our subsistence way of life, you know. And then when they -- they'd have a closure on the subsistence on Yukon/Kuskokwim, that was a couple of years ago I think it was, they closed completely. Nobody can go get their own fish, and they -- the Fish & Game had offered to fly the fish to those villages who didn't get during that closure. I'd like to get my fish, catch my fish while they're fresh, you know, from the river, and I think those machines, the sonars that they put on the mouth of the sloughs, you know, that they're not counting every fish that goes up, you know. And then they just count very few, and then they said there's no more fish, you know, you can't fish any more. There's too much regulations and limitations going on right now, you know, from the Fish & Game, you know.

28

29 And in my young days, we have our own regulations, you know. That's before Fish & Game comes along. We have our own limitation. We have our regulations, we have -- when the time comes, we go out and catch our geese and ducks and fowl, we can 33 we go out and catch a moose and deer and we have a ways to limit our catch ourselves, too. When we have enough, then we quit, you know. We don't waste, you know.

36

37 I these sport fishermen, sport hunters, they're the ones that are making this regulations come out open, you know, because those sport hunters and fishermen, they go out to catch just for the horns, you know. They kill the moose, they take the head and leave the carcass behind, and then the Fish & Game turned around and blamed the poor natives, that they did it. But these sport hunters and fishermen, they just catch their -- what they want and then they take off, and then those poor hunters that are hunting around there, they get blamed, and then get a pressure on them.

47

48 I think they shouldn't put too much pressure on the poor native hunters, you know, because that's the only way they 50

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can get their own food.

2

3 And I told one Fish & Game man, I told him, "I'm going
4 to go out hunt what I want to hunt, even if it's closed, you
5 know, and if you put me in jail, you take care of the family,
6 my family for winter, buy their food, you know."

7

8 There's too much going on to try to regulate our
9 hunting and commercial fishing -- I mean, subsistence way of
10 life, you know. I think they shouldn't be regulated. And then
11 those native people, a lot of them, they don't have a steady
12 job, they don't have -- they can't get no income, and they're
13 only depending on the land as we were depending on, live off
14 the land, you know. We were waiting for my dad's catch.
15 Farmigans, rabbits, deer. We just -- you know.

16

17 Them days, when we want to go out catch the reindeer,
18 we go to the school teacher, get a permit, piece of paper. And
19 then we get that, and then we went out and catch one. And then
20 when that one deer is finished, then if we're allowed to, we go
21 there, get another permit, and then go catch them, you know.

22

23 But I think when the time comes that the Fish & Game
24 think that the fish are declining, you know, I think they
25 shouldn't interfere with these poor people that are depending
26 on their catch, you know, to let them do what they want.

27

28 And now fishing -- when you're getting old like me, you
29 cannot do what you do when you're young, you know. I used to
30 just go out and drift, you know, catch my fish, but I can't do
31 it any more. I can go and set my net and then catch my fish,
32 you know. But nowadays, the commercial fishing time comes, the
33 Fish & Game says you've got to pull your set nets. Pull them
34 up during the -- preparing for the commercial fishing, and then
35 after the commercial fishing, you can take them back in. It's
36 too much work for the old man, you know. For elderly man, that
37 you cannot pull your net, because the anchors are too heavy and
38 everything, you know. So they shouldn't be interfering with
39 the elderly people what try to catch what they want, you know.

40

41 Well, anyway, I guess the only way now, it's not going
42 to stop. We're going to be fighting and fighting about the
43 commercial fishing and how we can do it and how we can operate
44 it. We've got to work together. We have to get our heads
45 together and start working something that we can go by, and
46 when if Fish & Game are -- we -- if we think the Fish & Game,
47 that they're doing the wrong way, then we can tell them, you
48 know. And then if they -- if the Fish & Game things the native
49 people are doing wrong, then they can get together and talk

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about it and solve that problem, and work from there.

2

3 Well, that's all I have to say. Thank you very much.

4

5 CHAIRMAN EWAN: Thank you, Mr. Anvil. Your point is
 6 very well taken. I think, you know, your concerns and other
 7 Native elders' concerns is why that Katy John case is in court
 8 right now. We realize that the State is, you know, playing
 9 around with subsistence in rural areas, with lives, and that is
 10 why we'd rather have the Federal Government who gives us at
 11 least some input into the process controlling the navigable
 12 waters, but that's all in the future.

13

14 I want to recognize John Borbridge, because I was going
 15 to recognize him next, but I skipped you.

16

17 MR. BORBRIDGE: Very appropriately so, Mr. Chairman.
 18 With your permission, it would probably be better to defer my
 19 comments, because I just wanted to address with you the where
 20 we go question, and whatever the directions might be for how we
 21 proceed after this meeting. So with your permission,

22

23 CHAIRMAN EWAN: Okay. You want to hold off for a
 24 while?

25

26 MR. BORBRIDGE: Pardon:

27

28 CHAIRMAN EWAN: Do you want to hold off then for a
 29 while?

30

31 MR. BORBRIDGE: Yes, Mr. Chairman.

32

33 CHAIRMAN EWAN: Okay. Mr. Sampson?

34

35 MR. SAMPSON: I respect your comments as well. I think
 36 there's an opportunity for you and I as well as those
 37 communities that have concern in regards to the use and -- of
 38 the resource. And that process is this process. And if you
 39 really look at the way the system is set up, using the Advisory
 40 Council as your base of means to get input from the community
 41 from the community level through your Council to get to the
 42 Board, and there's a process that's in place now to use, to
 43 voice your concerns. I think it's an opportunity for all of us
 44 to take advantage, and you and I know that the regulations
 45 that's in place are -- at points don't work for us, and if we
 46 feel that those regulations that the Federal agency has adopted
 47 are still not working, then there's a process that we go
 48 through for recommendation to make changes on those regulations
 49 where they will work for us.

50

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1
2 I think with that, I want to thank you for that
3 opportunity.

4
5 CHAIRMAN EWAN: Mr. Thomas?

6
7 MR. THOMAS: Thank you, Mr. Chairman. I just wanted --
8 Before you get done, I wanted to thank the Southcentral Council
9 Members for being here. It didn't take us long to recognize
10 the hard work that you put into the material you've got so far.
11 If there was any sense of what might have sounded like less
12 than appreciation, I think that's in error, because I certainly
13 have grown to appreciate what you have done. I think you guys
14 were very involved in doing what you did. I think you're
15 representing your region very well.

16
17 I think there are going to be some areas in this
18 process as we go along that we'll find that by sharing some
19 information that might have some relative application in
20 different regions would be helpful, so I would like to consider
21 sharing some of that as we go along, just for information, not
22 for anything else.

23
24 And, Mr. Chairman, you've done a good job, and thank
25 you for letting us participate.

26
27 CHAIRMAN EWAN: Thank you for the comments. Anybody
28 see? I thought I saw somebody raise their hand on this side?
29 Yes.

30
31 MR. RABINOWITCH: Three comments. One, I also think
32 it's been very productive.

33
34 The next c&t coming up is, of course, Upper Tanana, and
35 would -- because that Regional Council isn't here today or
36 tomorrow, if you will, I'd very much urge the other Staff
37 Committee members and Federal agencies to do what they can to
38 come to the meeting in Northway so they can hear just as we've
39 all heard today your deliberations on that c&t.

40
41 I've come into this process only fairly recently, the
42 assistance, although I've been in Alaska a long time and
43 worked for the Park Service for a long time. I've learned a
44 lot of things today. I've tried to listen rather than talk.
45 And I think if many of us can also come to Northway, we can
46 equally gain, so, my peers, I encourage you to do what you can.
47 I know there's busy schedules and budgets, but try hard.

48
49 In terms of the meeting yesterday, I think it's been --
50

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I think it's been very beneficial, and I would throw out a suggestion for everybody to chew on, and that is that we perhaps do this again. That the Staff Committee and the Council chairs or representatives, and occasionally perhaps the Staff Committee and specific councils, as we're doing today, get together. I don't have a schedule or a formula, but I think this -- I think it's healthy. I think there's been good discussion and good debate. We haven't solved all the problems, but I think we've done okay. I think more of this would be a good thing. So I throw that out for everybody to think about. I know I will bring that up at future staff committee meetings.

13

14 And my last one, my last comment is the hardest. Within the my own agency, the Park Service, we discuss and debate these issues just like we've all done, just like you do in your communities, and we also see many difficulties, many complicated issues. We don't have all the answers either. We are somewhat fearful of problems ahead, like those we've talked about and others. And we struggle to try to find answers, and we certainly don't do any better than everybody else. But I do think there are difficulties ahead, and I think whether we stay with the course we've been on, or whether we switch course, and we've talked about switching courses, I think some of those difficulties still will be out there. And the best I can offer is that is that if we can approach them in the spirit that we've approached in the last couple of days, I think maybe we can -- in small bites, maybe we can actually accomplish some things that everybody can feel comfortable about. So it may be a long, slow road, it probably is a long, slow road, but maybe that's okay. Maybe it's okay if we work along it. The fact that we're working together I think is the right thing.

33

34 And with that I'll stop. Thank you.

35

36 MR. SAMPSON: So we need speed up our chewing a little bit?

38

39 CHAIRMAN EWAN: I'm going to recognize Mr. Titus.

40

41 First I want to make a quick comment, and that is, you know, I'm pretty sure you're all aware that Federal agencies, you know, have -- the leaders have changed, and one is the National Park Service. They have a new Regional Director. In the area we have a new superintendent also, and Mr. Boyd is fairly new. Not totally new, but fairly new. So there are changes that maybe will work to our benefit. I think with the new people, it might be working to our advantage. I hope. That's my hope in the future that we can have a better

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relationship with the Federal agencies, work together.

2

3 Yes, Mr. Titus?

4

5 MR. TITUS: Thank you, Mr. Chair. Just to follow up on
6 the Upper Tanana c&t determination, from what I'm gathering is
7 that from the local people and other agencies that the -- we're
8 going to get a majority of the people that's going to throw out
9 the staff recommendations of the c&t in the Upper Tanana
10 region. A lot -- after reading the report, there's a lot of
11 differences amongst the people living in that region, and I
12 would urge that can make it to that meeting to come, because I
13 think that there's going to be major changes being done.

14

15 We were talking about the system earlier, the process
16 and the system, and at our last Regional Council meeting, that
17 was one of the things that was discussed. We all came to a
18 consensus at this meeting that it should be from the bottom up,
19 and at our last meeting, we also agreed on that, that major --
20 the majority of the input should come from the local
21 communities, and that was one of the decisions and resolutions
22 that our Regional Council passed, that we were not going to
23 make any kind of c&t determination unless we get full input
24 from the communities involved. And along that line, I believe
25 that the communities involved hasn't really worked since our
26 October meeting to resolve c&t within their community, and I've
27 heard from the rural communities in that region, but I never
28 really heard much from the Tok area. They're predominantly
29 non-native and I didn't hear very much about their concerns,
30 but I think there's going to be a lot of paper pushing and
31 stuff like that, and it's going to be real interesting to find
32 out what comes of that meeting.

33

34 Thank you, Mr. Chair.

35

36 CHAIRMAN EWAN: Any other? Yes, Mr. Olsen?

37

38 MR. OLSEN: Yes, thank you, Mr. Chairman, a quick
39 comment here. Yes, I did learn something here today. I
40 certainly wondered what I was here as a regional chair at a
41 different Council meeting, but I look at it as it certainly a
42 good open forum to hear your challenges and hopefully that
43 some day you will be able to hear ours, and that we can work
44 together. I really appreciate this kind of meetings, and
45 hearing of what your challenges are on the issues. Thank you.

46

47 CHAIRMAN EWAN: Thank you for your comment. Anybody
48 else? Ralph?

49

50

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1 MR. LOHSE: Yeah, Mr. Chairman, early in this session I
 2 asked what the basic questions were, and whether we could
 3 define them, and I got the answer, yes, we could kind of. And
 4 I think we kind of have by our talking, but, you know, I've
 5 been reading what's written on the board over there that you
 6 guys went through yesterday, and I'd sure like to see that all
 7 put down in a form that we could all receive it, because it
 8 does address a lot of the basic questions that have come up
 9 today right on those sheets of paper that are on the wall there
 10 from your guys' meeting yesterday. So I just would like to
 11 request that somehow or another that's included in our packet
 12 from this meeting.

13

14 MR. TITUS: One more.

15

16 CHAIRMAN EWAN: That's a good point, Ralph. If there's
 17 no objection, I guess that's the wish of the Council. Yeah.

18

19 Yes, Mr. Titus?

20

21 MR. TITUS: Yeah, along that line, I'd like the
 22 transcripts of all our meetings be mailed out to the Regional
 23 Council members, because at our last Council meeting we had a
 24 report about the designated hunter, and a lot of the Council
 25 members were recently appointed, and they really didn't know
 26 what they were getting into, and I believe that the transcripts
 27 of this meeting and all the other meetings that we have be sent
 28 out to all the Council members so that they can read what was
 29 going on, and who was involved at these meetings and what was
 30 said, I think it would be more helpful to them in making
 31 decisions. Thank you.

32

33 CHAIRMAN EWAN: Yes. I guess if there are no other
 34 comments, we'll get to you, Mr. Borbridge?

35

36 MR. BORBRIDGE: Yeah. Thank you, Mr. Chairman.

37

38 I just wanted to comment on how quickly the Regional
 39 Advisory Councils have taken hold, not of your own meetings,
 40 you took hold of that a long time ago, but rather with respect
 41 to this meeting and the way it developed.

42

43 Mr. Chairman, I noticed yesterday that we Feds were
 44 talking about various options that we had developed and we were
 45 talking about -- and I think to be blunt as a compliment to
 46 ourselves, we were willing to admit there had been delays. We
 47 had changed position. There had been a lot of debate.

48

49 Today, Mr. Chairman, we were very pleased to serve as

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the technical staff to the Southcentral Regional Advisory Council. I think we've finally assumed the correct position with respect to our working relationship.

4

5 I compliment the Council, and the same extends to tribal governments, in terms of having a long-range perspective. I realize you have to deal on week-to-week, month-to-month basis with regulations that impact how you're able to hunt and to fish for subsistence purposes, and yet you're able to take a look at the long-range perspectives.

11

12 There are discussion of tribal governments and the role that they play, not because everything is set now and all the questions of jurisdiction have been adequately addressed, but because it appears with the development of things as they are both in public policy from the Federal perspective, and litigation, that it's inevitable that there will be down the road some form of co-management, and that ultimately that's where we seem to be moving.

20

21 I appreciated discussions about Title VIII being Indian legislation. Now, it may not have seemed to fit into this discussion, but believe me we have already had those debates within the Federal agencies, and it was very, very important that you express your support for the fact that Title VIII is Indian legislation.

27

28 I also want to reiterate, even though I know that you're fully aware of this, Mr. Chairman, that at various times when the Council considers, or you voice on behalf the Council a possible change that you want -- may want to make to improve how subsistence hunting and fishing is being done, and you encounter a regulations which is in place, I want to remind the Council what they impress me as being fully aware of: You have the power to make those changes, and that even though there will be a period of time as you go through the process, I just want to remind you again and again that the regulations are ultimately going to be what you will make of them. And that when they get in the way, then you change them so that the regulations fit what it is that the subsistence users do. That's the way it's supposed to be.

42

43 And, finally, Mr. Chairman, I just wanted to be sure, because I appreciated so much being a part of a meeting with the Regional Advisory Council, and being able to hear your discussions as a Council with representatives from other Regional Advisory Councils, and so I just wanted to be sure that where we go from here was pretty well clear. And so this part, Mr. Chairman, will come more as a question. I know that

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the Council is not meeting in a formal session, because of lack of adequate public notice, but I know that you will undoubtedly want to through some consensus form to indicate your support for the question of where we go from here. And I also realize that some of the Council chairs that are present may want to in the appropriate fashion express some consensus support, which would have to be done informally. And so that's the only thing I'm thinking of at this moment, Mr. Chairman, is the process so that we have clearly on the record the indications of the Regional Advisory Council from Southcentral, and the other Council chairs as to what the consensus is as to where we go from here.

13

14 I know that the statement was made we appear to have come to a consensus on what was proposed by Sheldon, but I hadn't heard a clear indication of that, because we hadn't convened ourselves in a way we could do that. It may be that, and I'll conclude now, Mr. Chairman, it may be that the Council may want to in the appropriate fashion decide precisely how it wants to go from here, and Council chairs or representatives who are here may also want to determine the same.

22

23 And the reason I say that and seem to urge that is that once the Council has spoken and the Chairs have spoken, we sure know on the Federal side where we're going to go. It will be where we're pretty well directed to go. So that's it, and thank you, Mr. Chairman.

28

29 CHAIRMAN EWAN: Okay. Thank you. What Mr. Borbridge was talking about for you -- some of you that maybe might not know, is that we're not really formally in a meeting, because I guess by law we're supposed to give public notice, and we didn't give public notice and all that. So we're kind of -- it's an informal meeting, is that correct? We're

35

36 MR. SAMPSON: Work session.

37

38 CHAIRMAN EWAN: Yeah. Any comments about what John said about where we go from here? I -- Mr. Basnar?

40

41 MR. BASNAR: Yeah. The -- only one thing disturbs me, and this has really been a positive meeting, but players change in the Federal system. And today we're all pretty seem to be on the same sheet of music, but I'm just scared to death that some of you people are going to be transferred, retired, promoted, or whatever. And then we have to start all over. I'll give you an example. Denali National Park. I don't know how many superintendents I've been through and trained up there at Denali. And each one wants to come in and get his feet on

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the ground before he attacks a particular problem, and so we're delayed for another year before we can get a resolution to a situation. And I just hope that that doesn't occur here. I only point it out to you people on the staff so that if you do transfer, for God's sake, brief your replacement. Tell them we're not bad folks to work with, and we're here. We're always here, but you guys come and go. And we have to continue to re-educate you, and rehash the same old problems. So I don't know if there's any solution to it from the President of the United States on down when somebody hits the ground, they want to get their feet on firm ground before they start to run, and that -- just a word of caution. Thank you.

13

14 MR. SAMPSON: Just a quick statement in regards to some of the work that our coordinators have always done, and I think they've always gotten the bad end of the stick sometimes, and I want to thank the coordinators for their effort in keeping us informed as to what's happening in the Federal System. And that's Carol, Barbara, John, Helga, -- who?

20

21 UNIDENTIFIED: Vince and Moses.

22

23 MR. SAMPSON: And Vince. I want to thank all of you for your efforts in keeping us informed.

25

26 And then the other, John brought out, was in regards to the technical help from the agency side, and I think he made a point there that we need to utilize those folks just in a technical sense to where we can talk about the things, then they can put it in the perspective that -- in a form that -- the way we want it. I think that message should be taken too to your Advisory Councils.

33

34 Again, I think there's a -- this is an opportunity for all of us with such regulations that we -- that don't work for us, there's an opportunity for us to make changes on those things, and the point was made that there's such turn over where things change. But I think those of use that have been involved in the system, we continue to fight, but rather than fighting, we need to change course to where we can say -- I guess what I'm trying to say is we need to get this business away from us and them. We need to say "we". That involves everybody. That involves the community. That involves the agency. And that involves you as an Advisory Council. So I think with that type of concept, if we start working together, then what we do will work for the folks at the community level.

47

48 So with that, I want to thank the Council.

49

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1 CHAIRMAN EWAN: Thank you, Mr. Sampson. Any other
2omments? I think we're getting very close to the end of our
meeting. We can talk about other issues. Make comment about
4anything you want to. There are people in the back, if you
want to make a comment, you're sure welcome to.

6
7 MR. THOMAS: Not you. Time's up.

8
9 MR. OSKOLKOFF: Mr. Chairman?

10
11 CHAIRMAN EWAN: Yes, Mr. Oskolkoff?

12
13 MR. OSKOLKOFF: I wanted to ask the staff, and I guess
14 should go even to the Board to try and maybe help us
perceive what might be coming up in the future as far as what
16ols we have to work with. And that is I would like to see
some analysis of what the regs and the law is regarding using a
18ibal designation, and I would -- I would certainly like to
see it by our meeting at the end of February, the Advisory
20ouncil's meeting by the end of February, but if not, I think
21 could be delayed until the next meeting, simply because of
22e fact that we don't have time to rehash this entire issue
before the Board is supposed to make a decision, and I can't
24member the date of the Board meeting itself, but it seems
25ke it's coming up pretty soon. But I think that that needs
26 be looked into.

27
28 And I think that something that needs to be considered
along with it, two other things. One is if that does indeed
30ake -- if that is indeed a possibility, I should say, we would
need another mechanism, and I imagine that would be an
32individual permit system, or something to supplement that for
non-native rural residents of the State. And I'm saying this
34st from the perspective like I say of looking for
alternatives to the matrix that we found ourselves boxed into.

36
37 And the third thing there would a discussion of exactly
what it takes and what it entails to reconsider rural and
non-rural designations that were previously made. And I'm
thinking in particular of those areas that perhaps if we were
41 a situation where we could use a tribal designation or a
permit system, those people who would qualify for either of
those, but not qualify simply because they weren't in a -- they
weren't classified as rural to start with. And I think that I
45k that in all fairness, because when I spent time testifying
46 the rural designation hearings, I felt that there was a bit
47 reticence upon the minds of the people taking testimony,
that they were concerned that that would be the cut that had to
49 made as far as the numbers of people that would be involved

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in this, and be able to participate in a subsistence harvest. And I think that if these other two tools were made available to us, that it would limit the number of participants considerably compared to what we have in the existing matrix, particularly with regard to the remainder of the State, if not the Southcentral Region. And I just welcome some discussion on that, and a little more analysis so that we can feel that if the regulations indeed need to be changed, if there's a possibility, or that a -- the law is not appropriate for the circumstance that that point can be brought up to those appropriate officials.

12

13 CHAIRMAN EWAN: Yes?

14

15 MR. GOLTZ: You've asked some questions specific to Southeast (sic) if they apply to everyone, and I'd like to be able to answer, Mr. Chairman, if I could.

18

19 COURT REPORTER: I'm having trouble hearing you.

20

21 MR. GOLTZ: Okay. I'm Keith Goltz, Solicitor's Office. The first question as I understand it is, can you use tribal membership as a dividing line. And the simple answer to that question is no. ANILCA does not allow that kind of cut, unless happens to by coincidence or some other happenstance coincide with these three divisions. With this priority.

27

28 What the State has gotten in trouble with, and the Supreme Court in 1992 called it a distortion, is they tried to pick and choose between these levels in a way that they thought would be fair. And the Ninth Circuit has said now twice, no, this is a priority system. The way you are fair in this context is by going through the statute.

34

35 Now, when we went through this yesterday when Sheldon was here, because he got up here right beside me and pointed out that it really doesn't take care of the native situation. And the answer to Sheldon is, yeah, that's right, it doesn't. It's not a perfect statute. There are going to be problems.

40

41 So these are basic -- you basically go through these this way in spite of these distortions, and pretty much irrespective of that. Are you restricted to where you devise lines? No, you can draw these lines. You can point the levels here differently. There's an awful lot of room. Once you accept the fundamentals here, there's an awful lot of room within this statute for making adjustments, and this one in here was made by the staff using their best efforts and their best information at that time. They're going to be horrified

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to hear me say that -- this, but, yes, you can change those. It's a little bit more difficult than Subpart D, but it's not statutory, it's regulatory, and it's like -- it's open for changes. And if the present -- if the present cuts don't make sense to you, then it's our job to help you put together a regulatory package that does make sense, or at least is better. We're not going to be able to make it perfect for you. You have probably the most complicated task of anyone. But we'll help. Yes?

10

11 CHAIRMAN EWAN: Ralph, do you

12

13 MR. GOLTZ: Oh, I might offer, the refuge staff is here, and they have a lot of information. I think they could be a resource you could tap. I'll offer them. And I haven't been invited to do so, but I think maybe it would be the thing.

17

18 CHAIRMAN EWAN: A comment or a question over here.

Ralph?

20

21 MR. LOHSE: Well, Mr. Chairman, I've been kind of listening and trying to figure out some of the things -- some of the problems. A lot of what Gary asked was the same basic question that I was thinking of asking. I heard John Borbridge say basically the same thing that Sheldon said, and the same thing I've heard a couple times this afternoon, and I need some clarification on this, especially as we carry it into the future, and that question is, and you said you've discussed this as an agency, interagency. And that question is, is ANILCA Indian legislation? I mean, has there been a decision that says that ANILCA is Indian legislation? Or does ANILCA address the difference that he shows up there, which is the difference between urban and rural? I was under the impression from my reading of it that basically what ANILCA protects is the right of the rural Alaskan, native and non-native, and that was my impression from reading ANILCA. Now, how far and how much decision has been made in this direction that we've talked?

39

40 MR. GOLTZ: There hasn't been any litigation. We discussed this yesterday, and my answer to Sheldon was basically in my view parts of ANILCA are in fact Indian legislation, and the court when it looks at it will probably say that it is. That's my view. It's different from the Department's view. You guys have put me way out on a limb today, and I will certainly be getting telephone calls, but I'm giving -- I am giving you my best shot at this. And I have been around this as long as many of you.

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1 That is not probably very useful information for you
2 though. I don't think -- the courts don't get to that question
3 until they get in a very tight corner and they can't deal with
4 it any other way.

5

6 Now, we like to talk about what's going to happen if
7 the worse happens, and as I hear all these "but if" and "what
8 if" questions go around here, it occurs to me that all of --
9 the sky can't fall at all those places. Some of your what if
10 questions are inconsistent. And I don't think it's useful to
11 spend too much time worrying about when that sky is going to
12 fall. I think that you're better off trying to avoid those
13 lines when you can, to approach them cautiously when you can't
14 avoid them, and to use the sense that's common to people who
15 walk the land. And if you do that, you're not going to have
16 very many legal problems.

17

18 The flood of litigation we have gotten is people --
19 when people have gone up against those lines and either refused
20 cross or tried to distort the line in such a way that it
21 dealt with the individual situation, but not the statute.
22 There are some tough decision levels in the statute, but
23 they're very few. And I think if you face up to those, you're
24 not going to have very many legal problems. You might have
25 problems with constituents, but even there there's nothing in
26 title VIII that requires you to go full bore all at once. You
27 can go incrementally. You can use your common sense about how
28 people are using the resource at this time. And you're not
29 bound by any bureaucratic structures that don't make sense.

30

31 CHAIRMAN EWAN: Yeah. Keith, the second part of
32 Ralph's comment was his interpretation was that this law was
33 for rural native and non-native.

34

35 MR. GOLTZ: Right. That's correct.

36

37 CHAIRMAN EWAN: You're saying he's right, and you're
38 also adding that this -- in your opinion, this is Indian
39 legislation?

40

41 MR. GOLTZ: Yeah. If I was to oversimplify it, I would
42 say that when you're up in this level, it's rural, and the fact
43 that it's Indian legislation isn't going to matter very much.
44 If we ever get down to here, then the courts would probably, in
45 my view, going to look at it as Indian legislation, when we
46 really get down to the crunch here. But historically it's just
47 likely -- we could go through this like this, we could
48 always stay up here with good management and maybe a little
49 slack. But in a lot of cases, we've gone from abundance to a

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crash and then worked our way up this way. And that's just as likely, probably more likely than gradual declines. These critters don't follow flow charts. And I wouldn't try to anticipate too much. I deal with the facts in hand.

CHAIRMAN EWAN: I believe Mr. Lohse posed a question. Had there been an official decision or do you -- on the -- this legislation, whether it's Indian legislation or not?

MR. GOLTZ: Well, the official view of the Department is

CHAIRMAN EWAN: Yours? Not

MR. GOLTZ: The Department's view, and our legal position, is that it is not. But it's never made any difference. That's never been tested. It's also the official view of the Department that this applies only to public lands. What is being tested in the Katy John legislation (sic). And that's the reason I'm going to get the phone calls. But my view of my function isn't to give you the official party line. It's to give you enough predictive indicators so that you can work this through on your own. And that's the basis for my statements.

CHAIRMAN EWAN: Let me get Gary here.

MR. OSKOLKOFF: Just one more question, and maybe I can add to that, and maybe you can enlighten us on this, is we thought now are essentially doing designation by group, that is group based on residency, where they live at. Are there other group designations we can use other than residency?

MR. GOLTZ: Not that I'm -- no, I don't think so. If you get down to the crunch, the historic level, maybe. I don't know. I mean, you could maybe think about other things.

CHAIRMAN EWAN: Is this where you're thinking about tribal group?

MR. OSKOLKOFF: I was thinking about using anything other than -- the one thing that doesn't work is the one thing we have, and that is use by area. And that's

MR. GOLTZ: I'm not sure that

MR. OSKOLKOFF: and what I'm saying is that it didn't work very well for us. I shouldn't say it doesn't work, but it didn't work very well when we tried to apply it. It --

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We felt rather bad on every side that we left people out in certain respects one way or another. And I'm wondering if there -- what I'm looking for is any other alternative way of doing it other than by where you have your primary residence?

5

6 MR. GOLTZ: Well, a couple of comments. First, don't strive for perfection. You're not going to be able to achieve it. And the best you can do is to improve the situation. There are going to be gaps. I don't know of any other way. No statute that I'm aware of has ever been perfectly drawn, and this one certainly is not. The best you can do is the best you can do, and that's it. And the law does not require you to be right. Your charge is to be rational.

14

15 MR. OSKOLKOFF: The next question I have is in regards to customary and traditional, the definition that we ended up using, or the criteria I guess that have been -- that we ended up using on customary and traditional, how much leeway do we have in redefining that on an Advisory Council level?

20

21 MR. GOLTZ: I think you -- legally? You've got all the leeway in the world. Practically, the Board is going to want to make its changes slowly and incrementally, and there is some value in staying as close to the State as we can. But those are regulatory, and if they don't work, then we should set about finding things that do work.

27

28 Somebody talked yesterday about social disruption. That's what I think we all want to avoid. And our rules are forcing us into that kind of box, we ought to change those rules. Those rules are here to serve us, we're not here to serve those rules.

33

34 MR. OSKOLKOFF: And if I could, just one more quick question. The term "community," does that -- is that specifically defined to mean only the area of residence? I mean, in the way it's used in this context? You can see what I'm grasping at here in various directions, trying to get a little more -- a few more tools in the box I guess we should say.

41

42 MR. GOLTZ: Well, I think your -- the one tool you're probably going to want to take a look at are those rural designations if they're not working for you. But that's where I'd focus on. I can see the staff squirming. They're not going to like that, but you know, it's -- that's where the primary lines are drawn around that rural designation. And if they're not working, I'd say re-examine them and get the refuge staff to give you the -- what data they have, and the State I

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know will cooperate, and get to it. I think there are some -- and we can't do this perfectly.

3

4 There -- and we're going to have to get out in front in
5 a couple of areas. I know that you're going to have to deal
6 with Ninilchik. I know that, because their attorney keeps
7 calling me. And you're going to have to deal maybe with some
8 other crisis, and maybe you'll have to go back and do those a
9 little differently after you've got some experience under your
10 belt. I don't have all the answers.

11

12 The statute doesn't give very many answers. It gives
13 that basic fundamental structure and then says the people on
14 the ground should decide.

15

16 MR. OSKOLKOFF: I appreciate your candid response.

17

18 MR. BORBRIDGE: Yeah, Mr. Chairman?

19

20 CHAIRMAN EWAN: I think Mr. Titus had his hand up a
21 little earlier.

22

23 MR. TITUS: Thank you, Mr. Chair. My questions
24 earlier, I asked the question about the navigable waters and I
25 understand that we are only right now dealing with -- well,
26 pertaining to the land, and you say to me that when you get
27 into navigable waters, we're in a completely different boat. I
28 don't know what kind of laws the Feds have pertaining to
29 waters, but I know there are -- the Feds have Marine Mammal Act
30 and they have all different kinds of Acts pertaining to the
31 water. And you have the Migratory Bird Treaties with the U.S.
32 and Canada. And what does the Federal Law have in writing
33 pertaining to protecting subsistence in waters?

34

35 MR. GOLTZ: Can I demonstrate, Mr. Chairman?

36

37 If I was younger and less experienced at this, I would
38 surely be -- you're going to get me fired.

39

40 (Laughter)

41

42 MR. GOLTZ: It's not simple. You're asking me the
43 question, so I'll give you the answer and then I'll tell you
44 what we hope we don't have to deal with this.

45

46 But let's say we've got a piece of Federal land. The
47 way, and it's an historic reason. It has to do with the way
48 states came into the Union, and it has to do before that with
49 how the king owned or didn't own the riparian rights in

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England. So it goes a long way back. It's purely historical. It doesn't make a whole lot of sense today, but here it is.

3

4 If you've got a piece of Federal land, and you've got a navigable water that goes through it, there is a rip (ph) of State jurisdiction through that Federal land. It drives the Federal manager nuts, and the State rubs its hands with glee. They can always give these guys a little bit of problem, and sometimes a lot of problems, and et cetera (ph).

10

11 It's not real good for wildlife management, because you get all kinds of movements, and every fall we get a dozen or more questions about, "Now, where can I hunt? If I'm on this, and I have a State permit, how far can I shoot over here?" And we have all kinds of questions about where the riparian zone is, and it's a dream (ph). It's made to order for lawyers, and there's all kinds of litigation over it.

18

19 All right. Where -- and this exists within all of the 20 I think every one of our Federal land holdings. There's at least some State jurisdiction in there.

22

23 We've got feeder streams going off here. And anybody who walks the land knows that this is vastly over-simplifying, but the way this is basically structured today is that this feeder stream, if it's non-navigable, is Federal. The navigable ribbon is State. The fish don't always check in, so they'll be going up State jurisdiction, and then they'll hit Federal jurisdiction. When it hits the Federal jurisdiction, the Federal subsistence law applies. But until it gets there, it's State. That's the way it is today.

32

33 The Katy John litigation would say this ribbon of jurisdiction for subsistence purposes belongs to the Feds, counts for Federal jurisdiction there. I don't know what that court's going to go. There are 13 western states who have filed on the side of the State of Alaska. There's a lot at stake here for the local wildlife managers.

39

40 Now, your question today, and this is maybe another way to illustrate it, suppose the upstream flow is like this, and suppose somebody puts a weir down here, or a State fisheries, and it cuts off that run that goes up there and closes the harvest up here. Well, I'm predicting myself that if that should ever happen, the Federal Government would reach off and open up that weir. But that's, you know, -- nobody's said that yet. Okay. We haven't been faced with a fact situation that would force us to stay (ph).

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1 All the way along the assumption has been that this
 2 will somehow go back to the State and that we should give back
 3 to the State as close to what we got as possible. But that can
 4 mean stagnation. Stagnation is an invitation to massacre, and
 5 it's our charge to move the program along and make it as
 6 responsive as we can.

7
 8 CHAIRMAN EWAN: John?

9
 10 MR. MORRISON: I'd like to hear your explanation,
 11 Keith, on the situation last year where the Federal Subsistence
 12 Board created a regulation for Southeast that enables deer
 13 hunters to shoot from a boat, which is in violation of State
 14 law. Shooting a deer that may even be on State land, below the
 15 high tide line, in which case the deer is entire in
 16 theoretically State jurisdiction, and should be therefore
 17 hunted under State regulation. And the Board went ahead, the
 18 Federal Board went ahead and made it legal to shoot from a
 19 boat. How do you see that?

20
 21 MR. GOLTZ: I see it as a boat here, a deer here. If
 22 that's somewhere in the boat, (indiscernible).

23
 24 (Laughter)

25
 26 MR. GOLTZ: It is -- you know, it just isn't going to
 27 fit together perfectly, and any lawyer who tells you he has all
 28 the answers in this is either very young or very stupid. I'm
 29 not very young.

30
 31 MR. OLSEN: In simplified layman's terms, could you
 32 define navigable waters?

33
 34 MR. GOLTZ: Well, somebody's defined it as any water
 35 that will float a legal brief.

36
 37 (Laughter)

38
 39 MR. OLSEN: Float a what?

40
 41 MR. GOLTZ: A legal brief. And that's a recognition of
 42 the fact that over the years the courts are becoming more and
 43 more inclined to say something is navigable waters. We used to
 44 think that navigable meant a steam boat or at least floating
 45 logs. Now in the Gulkana decision, the Ninth Circuit said it's
 46 any water that is capable of supporting craft that are subject
 47 to use as transportation. In that case there was -- there is a
 48 shoal area that is very, very shallow. Almost no boat can get
 49 over it, even some of the jet boats will ground there, but what
 50

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do people do? They walk the boat over and go. And the court said that's navigable.

3

4 CHAIRMAN EWAN: Speaking of the Gulkana case, let me say that AHTNA was the only one that fought the State over it. Now it's affecting everybody.

7

8 MR. GOLTZ: Most of the waters in this State are navigable.

10

11 CHAIRMAN EWAN: Yes, Taylor, did you have

12

13 MR. BRELSFORD: Mr. Chairman, a further point of clarification. Keith's offered many useful points of information this afternoon. I was uncertain about the court decision in 1992 that used the term "distortion". You mentioned it occurred in 1992?

18

19 MR. GOLTZ: State waters.

20

21 MR. BRELSFORD: What decision was that, please?

22

23 MR. GOLTZ: I'm getting a blank. The last -- as far as I know, it was the last State court decision on customary and additional. John, help me with the name.

26

27 MR. BRELSFORD: Would it have been the Morrey decision? In 1992 in the Alaska Supreme Court?

29

30 MR. GOLTZ: Alaska Supreme Court.

31

32 MR. BRELSFORD: Thank you.

33

34 CHAIRMAN EWAN: John?

35

36 MR. BORBRIDGE: Yeah, Mr. Chairman, not to get us into more legal detail, but there was reference to Indian legislation. I want to be sure that the reference to it fully appreciates what I had the opportunity to say yesterday, and that is during the consideration of Title VIII that the prime mover of the legislation stated that it was his intention that Title VIII should be regarded as Indian legislation under the canons of statutory construction both as to title and as to content or provisions. And generally the courts tend to give more weight to the utterances or testimony of a prime mover of legislation rather than that of a congressman who happened to be involved. A congressman simply because he voted on legislation doesn't have particular standing in terms of helping to determine what the intent of the legislation was,

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But a prime mover tends generally to be given more weight in litigation that does arise.

3

4 I might add, too, that while this hasn't risen in litigation, I think the main reason is because we're at the top level of those three tiers at the present time, you know. I mean, the second level rather, in the second third. And there hasn't been the necessity of addressing this question. There hasn't been any burning issue, plus the fact that native subsistence resources have been primarily directed at questions of jurisdiction, such as arose the Katy John case, and who -- in terms of who would be -- have standing to administer the program in light of the State's lack of compliance with Title V#II provisions.

15

16 So as I said, I didn't want to get us more into legal matters, but I thought I would mention legal matters. Thank you.

19

20 CHAIRMAN EWAN: Yes, thank you, Mr. Borbridge.
Mr. Thomas?

22

23 MR. THOMAS: Thank you, Mr. Chairman. I like to glance over this public law, and the one thing -- the one thing that gives me a level of comfort is that in fact this whole law has a lot of conservation. It's not a law of destruction. So I think that's a built in protection that we can all appreciate.

28

29 CHAIRMAN EWAN: Okay. Thank you. Other comments? I will not prolong the meeting any longer than you want.

31

32 While you're thinking about maybe a final comment or question, let me say -- let me repeat what I said yesterday, and that is you've got to keep in mind the long-term need to manage properly your fish and game. That's what it's all about I think. I think this is good for the State agencies, Federal, both, to keep in mind that we can enhance the numbers out there.

39

40 I heard a person over there from the Bethel area talking about fish. It seems to me like with all the technology we have, all the money that's being spent, in my opinion a lot of times foolishly, for other things, here we could be having hatcheries and other programs to enhance more fish runs up those rivers and so on. I think that you keep that in mind, and that we've got to continue to press for that. I'd like to see maybe some day where you get enough moose transported into areas that don't have moose for the time being. Something like that. I don't know. Maybe it's not

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possible, not feasible, but that's something we might be talking about.

3

4 Yes?

5

6 MR. THOMAS: I think the moose thing is more basic than the fishing one is, you know. But I think with the technology that's been placed in the effort of harvesting resources from the ocean is so advanced and so effective, boy, I would hate to imagine the size of an enhancement system it would take to try to match what's being harvested out there. But you're right, that technology's playing a big role in this whole thing. Thank you, Mr. Chairman.

14

15 CHAIRMAN EWAN: Any other comment?

16

17 MR. BASNAR: Need to move to adjourn?

18

19 CHAIRMAN EWAN: If there's no other -- oh, yes. Carol?

20

21 MS. JORGENSEN: I just wanted to add from a coordinator's perspective, and I know we all feel this way. There's nothing more appreciative than seeing the Regional Councils together with Staff Committee. And one of our Board members on the Federal Subsistence Board, Bob Williams, who sits in for Bill Janek, had expressed that he would like to see this happen with the Board members being present also in more of a brain storming and communicating, because even though we're ten separate regions, we're not islands into ourselves. And what we do affects everybody else. And he felt like he could be a far more effective Board member if we had this kind of forum once or twice a year, including the Federal Subsistence Board, so that there's continuity, and there's the feeling that we're all on the same boat going somewhere, so to speak.

36

37 And I wanted to thank Walter in the fact that what he said of -- on "us" and "them," we shouldn't be. We should be a "we". That's the comfort zone for all of us.

40

41 And I know us coordinators work hard to keep each other
42 we communicate with each other constantly, and that's been a
43 a vital tool for us, so that we can move forward and do the
44 best job that we can do for our councils.

45

46 But I'm just appreciative of this, because I think from
47 we all benefit so much. All of us as staff, as Regional
48 Councils, as serving our publics. And that's who we serve, our
49 public. Thank you.

50

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1
2 CHAIRMAN EWAN: Uh-huh. Thank you for your comment.
Any other coordinator here that wants to make a comment?

4
5 MS. EAKON: I do.

6
7 CHAIRMAN EWAN: Yeah.

8
9 MS. EAKON: I want to thank the Southcentral Regional
Council to once again to drop everything and come again on
short notice. That to me demonstrate the high degree of
commitment that each member has to this program and to their
respective region.

14
15 CHAIRMAN EWAN: Okay. Thank you, Helga. Sheldon?

16
17 MR. KATCHATAG: Thank you, Mr. Chairman. I appreciate
the open-mindedness, patience and consideration of the
Southeast (sic) Regional Advisory Council for bearing with all
of us as we try to do the right thing for those of us that are
customary and traditional users.

22
23 With regard to tribal people, I would just like to
emphasize that the most -- since subsistence is defined in the
statute as customary and traditional uses, I would like to
emphasize to this Council and to all the rest of the Councils
that have representatives here, that from my perspective as a
native person, as an Inupiat, that I hold customary and
additional uses, called in the statute subsistence, to be a
tribal right, and that's one thing that is not properly
addressed in the statute or in the regulations. And I would
like your Council in your deliberation to bear that in mind,
especially when dealing with the so-called threshold
communities. And I have already stated on public record my
opinion that the urban natives, some 20,000 plus have had their
subsistence rights violated by being excluded under Title VIII.
Thank you, Mr. Chairman.

38
39 CHAIRMAN EWAN: Thank you. With that I guess if there
are no other comments, I'll entertain a motion to adjourn our
meeting, even if it's an informal meeting.

42
43 MR. BASNAR: Move to adjourn.

44
45 CHAIRMAN EWAN: There's a motion to adjourn. Is there
an objection? Meeting's adjourned.

47
48 (Off record)

49
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16 Hotel, Anchorage, Alaska;

17
18 THAT the transcript is a true and correct transcript
19 requested to be transcribed and thereafter transcribed by me
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22 THAT I am not an employee, attorney, or party
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26 1995.

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